

2 **ESSB 5948** - H COMM AMD **ADOPTED 4-17-93**

3 By Committee on Health Care

4

5 Strike everything after the enacting clause and insert the
6 following:

7 "Sec. 1. RCW 18.130.090 and 1986 c 259 s 6 are each amended to
8 read as follows:

9 (1) If the disciplining authority determines, upon investigation,
10 that there is reason to believe a violation of RCW 18.130.180 has
11 occurred, a statement of charge or charges shall be prepared and served
12 upon the license holder or applicant at the earliest practical time.
13 The statement of charge or charges shall be accompanied by a notice
14 that the license holder or applicant may request a hearing to contest
15 the charge or charges. The license holder or applicant must file a
16 request for hearing with the disciplining authority within twenty days
17 after being served the statement of charges. If the twenty-day limit
18 results in a hardship upon the license holder or applicant, he or she
19 may request for good cause an extension not to exceed sixty additional
20 days. If the disciplining authority finds that there is good cause, it
21 shall grant the extension. The failure to request a hearing
22 constitutes a default, whereupon the disciplining authority may enter
23 a decision on the basis of the facts available to it.

24 (2) If a hearing is requested, the time of the hearing shall be
25 fixed by the disciplining authority as soon as convenient, but the
26 hearing shall not be held earlier than thirty days after service of the
27 charges upon the license holder or applicant. ~~((A notice of hearing~~
28 ~~shall be issued at least twenty days prior to the hearing, specifying~~
29 ~~the time, date, and place of the hearing. The notice shall also notify~~
30 ~~the license holder or applicant that a record of the proceeding will be~~
31 ~~kept, that he or she will have the opportunity to appear personally and~~
32 ~~to have counsel present, with the right to produce witnesses, who will~~
33 ~~be subject to cross examination, and evidence in his or her own behalf,~~
34 ~~to cross examine witnesses testifying against him or her, to examine~~
35 ~~such documentary evidence as may be produced against him or her, to~~

1 ~~conduct depositions, and to have subpoenas issued by the disciplining~~
2 ~~authority.))~~

3 NEW SECTION. **Sec. 2.** A new section is added to chapter 18.130 RCW
4 to read as follows:

5 REQUIRED UNIFORM PROCEDURES. (1) The secretary shall develop
6 uniform procedural rules to respond to public inquiries concerning
7 complaints and their disposition, active investigations, statement of
8 charges, findings of fact, and final orders involving a licensee,
9 applicant, or unlicensed person. The uniform procedural rules adopted
10 under this subsection apply to all adjudicative proceedings conducted
11 under this chapter and shall include provisions for the establishing
12 time lines for discovery, settlement, and scheduling hearings.

13 (2) The uniform procedures for conducting investigations shall
14 provide that prior to taking a written statement:

15 (a) For violation of this chapter, the investigator shall inform
16 such person, in writing of: (i) The nature of the complaint; (ii) that
17 the person may consult with legal counsel at his or her expense prior
18 to making a statement; and (iii) that any statement that the person
19 makes may be used in an adjudicative proceeding conducted under this
20 chapter; and

21 (b) From a witness or potential witness in an investigation under
22 this chapter, the investigator shall inform the person, in writing,
23 that the statement may be released to the licensee, applicant, or
24 unlicensed person under investigation if a statement of charges is
25 issued.

26 (3) In order to assure the uniform application of the procedural
27 rules developed by the secretary, the secretary or his or her designee
28 shall serve as presiding officer for all proceedings under this
29 chapter, including those conducted by disciplinary authorities
30 identified in RCW 18.130.040(2)(b), other than the board of funeral
31 directors and embalmers, and shall perform all functions of the
32 presiding officer under chapter 34.05 RCW. In those areas where the
33 disciplining authority is a board, the secretary or his or her
34 designee, shall not vote on the final decision.

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

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

6 The cost of the treatment shall be the responsibility of the
7 license holder, but the responsibility does not preclude payment by an
8 employer, existing insurance coverage, or other sources. Primary
9 alcoholism or drug treatment shall be provided by approved treatment
10 ~~((facilities))~~ programs under RCW ~~((70.96A.020(2)))~~ 70.96A.020:
11 PROVIDED, That nothing shall prohibit the disciplining authority from
12 approving additional services and programs as an adjunct to primary
13 alcoholism or drug treatment. The disciplining authority may also
14 approve the use of out-of-state programs. Referral of the license
15 holder to the program shall be done only with the consent of the
16 license holder. Referral to the program may also include probationary
17 conditions for a designated period of time. If the license holder does
18 not consent to be referred to the program or does not successfully
19 complete the program, the disciplining authority may take appropriate
20 action under RCW 18.130.160. The secretary shall adopt uniform rules
21 for the evaluation by the disciplinary authority of a relapse or
22 program violation on the part of a license holder in the substance
23 abuse monitoring program. The evaluation shall encourage program
24 participation with additional conditions, in lieu of disciplinary
25 action, when the disciplinary authority determines that the license
26 holder is able to continue to practice with reasonable skill and
27 safety.

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

1 (3) The license holder shall sign a waiver allowing the program to
2 release information to the disciplining authority if the licensee does
3 not comply with the requirements of this section or is unable to
4 practice with reasonable skill or safety. The substance abuse program
5 shall report to the disciplining authority any license holder who fails
6 to comply with the requirements of this section or the program or who,
7 in the opinion of the program, is unable to practice with reasonable
8 skill or safety. License holders shall report to the disciplining
9 authority if they fail to comply with this section or do not complete
10 the program's requirements. License holders may, upon the agreement of
11 the program and disciplining authority, reenter the program if they
12 have previously failed to comply with this section.

13 (4) The treatment and pretreatment records of license holders
14 referred to or voluntarily participating in approved programs shall be
15 confidential, shall be exempt from RCW 42.17.250 through 42.17.450, and
16 shall not be subject to discovery by subpoena or admissible as evidence
17 except for monitoring records reported to the disciplining authority
18 for cause as defined in subsection (3) of this section. Monitoring
19 records relating to license holders referred to the program by the
20 disciplining authority or relating to license holders reported to the
21 disciplining authority by the program for cause, shall be released to
22 the disciplining authority at the request of the disciplining
23 authority. Records held by the disciplining authority under this
24 section shall be exempt from RCW 42.17.250 through 42.17.450 and shall
25 not be subject to discovery by subpoena except by the license holder.

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

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

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

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

- 1 (i) An approved monitoring treatment program;
- 2 (ii) The professional association operating the program;
- 3 (iii) Members, employees, or agents of the program or association;
- 4 (iv) Persons reporting a license holder as being impaired or
- 5 providing information about the license holder's impairment; and
- 6 (v) Professionals supervising or monitoring the course of the
- 7 impaired license holder's treatment or rehabilitation.

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

10 ~~((8) In addition to health care professionals governed by this~~
11 ~~chapter, this section also applies to pharmacists under chapter 18.64~~
12 ~~RCW and pharmacy assistants under chapter 18.64A RCW. For that~~
13 ~~purpose, the board of pharmacy shall be deemed to be the disciplining~~
14 ~~authority and the substance abuse monitoring program shall be in lieu~~
15 ~~of disciplinary action under RCW 18.64.160 or 18.64A.050. The board of~~
16 ~~pharmacy shall adjust license fees to offset the costs of this~~
17 ~~program.))~~

18 **Sec. 4.** RCW 18.130.040 and 1992 c 128 s 6 are each amended to read
19 as follows:

20 (1) This chapter applies only to the secretary and the boards
21 having jurisdiction in relation to the professions licensed under the
22 chapters specified in this section. This chapter does not apply to any
23 business or profession not licensed under the chapters specified in
24 this section.

25 (2)(a) The secretary has authority under this chapter in relation
26 to the following professions:

- 27 (i) Dispensing opticians licensed under chapter 18.34 RCW;
- 28 (ii) Naturopaths licensed under chapter 18.36A RCW;
- 29 (iii) Midwives licensed under chapter 18.50 RCW;
- 30 (iv) Ocularists licensed under chapter 18.55 RCW;
- 31 (v) Massage operators and businesses licensed under chapter 18.108
- 32 RCW;
- 33 (vi) Dental hygienists licensed under chapter 18.29 RCW;
- 34 (vii) Acupuncturists certified under chapter 18.06 RCW;
- 35 (viii) Radiologic technologists certified under chapter 18.84 RCW;
- 36 (ix) Respiratory care practitioners certified under chapter 18.89
- 37 RCW;
- 38 (x) Persons registered or certified under chapter 18.19 RCW;

1 (xi) Persons registered as nursing pool operators;
2 (xii) Nursing assistants registered or certified under chapter
3 (~~18.52B~~) 18.88A RCW;
4 (xiii) Health care assistants certified under chapter 18.135 RCW;
5 (xiv) Dietitians and nutritionists certified under chapter 18.138
6 RCW;
7 (~~(xiv)~~) (xv) Sex offender treatment providers certified under
8 chapter 18.155 RCW; and
9 (~~(xv)~~) (xvi) Persons licensed and certified under chapter 18.73
10 RCW or RCW 18.71.205.
11 (b) The boards having authority under this chapter are as follows:
12 (i) The podiatric medical board as established in chapter 18.22
13 RCW;
14 (ii) The chiropractic disciplinary board as established in chapter
15 18.26 RCW governing licenses issued under chapter 18.25 RCW;
16 (iii) The dental disciplinary board as established in chapter 18.32
17 RCW;
18 (iv) The council on hearing aids as established in chapter 18.35
19 RCW;
20 (v) The board of funeral directors and embalmers as established in
21 chapter 18.39 RCW;
22 (vi) The board of examiners for nursing home administrators as
23 established in chapter 18.52 RCW;
24 (vii) The optometry board as established in chapter 18.54 RCW
25 governing licenses issued under chapter 18.53 RCW;
26 (viii) The board of osteopathic medicine and surgery as established
27 in chapter 18.57 RCW governing licenses issued under chapters 18.57 and
28 18.57A RCW;
29 (ix) The board of pharmacy as established in chapter 18.64 RCW
30 governing licenses issued under chapters 18.64 and 18.64A RCW;
31 (x) The medical disciplinary board as established in chapter 18.72
32 RCW governing licenses and registrations issued under chapters 18.71
33 and 18.71A RCW;
34 (~~(x)~~) (xi) The board of physical therapy as established in
35 chapter 18.74 RCW;
36 (~~(xi)~~) (xii) The board of occupational therapy practice as
37 established in chapter 18.59 RCW;
38 (~~(xii)~~) (xiii) The board of practical nursing as established in
39 chapter 18.78 RCW;

1 (~~(xiii)~~) (xiv) The examining board of psychology and its
2 disciplinary committee as established in chapter 18.83 RCW;
3 (~~(xiv)~~) (xv) The board of nursing as established in chapter 18.88
4 RCW; and
5 (~~(xv)~~) (xvi) The veterinary board of governors as established in
6 chapter 18.92 RCW.

7 (3) In addition to the authority to discipline license holders, the
8 disciplining authority has the authority to grant or deny licenses
9 based on the conditions and criteria established in this chapter and
10 the chapters specified in subsection (2) of this section. However, the
11 board of chiropractic examiners has authority over issuance and denial
12 of licenses provided for in chapter 18.25 RCW, the board of dental
13 examiners has authority over issuance and denial of licenses provided
14 for in RCW 18.32.040, and the board of medical examiners has authority
15 over issuance and denial of licenses and registrations provided for in
16 chapters 18.71 and 18.71A RCW. This chapter also governs any
17 investigation, hearing, or proceeding relating to denial of licensure
18 or issuance of a license conditioned on the applicant's compliance with
19 an order entered pursuant to RCW 18.130.160 by the disciplining
20 authority.

21 **Sec. 5.** RCW 18.130.050 and 1987 c 150 s 2 are each amended to read
22 as follows:

23 The disciplining authority has the following authority:

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

26 (2) To investigate all complaints or reports of unprofessional
27 conduct as defined in this chapter and to hold hearings as provided in
28 this chapter;

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

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

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

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

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

4 (8) To use the office of administrative hearings as authorized in
5 chapter 34.12 RCW to conduct hearings. However, the disciplining
6 authority shall make the final decision regarding disposition of the
7 license;

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

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

13 (11) To contract with licensees or other persons or organizations
14 to provide services necessary for the monitoring and supervision of
15 licensees who are placed on probation, whose professional activities
16 are restricted, or who are for any authorized purpose subject to
17 monitoring by the disciplining authority;

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

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

23 ~~(14) ((To enter into an assurance of discontinuance in lieu of
24 issuing a statement of charges or conducting a hearing. The assurance
25 shall consist of a statement of the law in question and an agreement to
26 not violate the stated provision. The applicant or license holder
27 shall not be required to admit to any violation of the law, nor shall
28 the assurance be construed as such an admission. Violation of an
29 assurance under this subsection is grounds for disciplinary action;~~

30 ~~(15))~~) To designate individuals authorized to sign subpoenas and
31 statements of charges.

32 **Sec. 6.** RCW 18.130.160 and 1986 c 259 s 8 are each amended to read
33 as follows:

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

- 1 (1) Revocation of the license;
- 2 (2) Suspension of the license for a fixed or indefinite term;
- 3 (3) Restriction or limitation of the practice;
- 4 (4) Requiring the satisfactory completion of a specific program of
- 5 remedial education or treatment;
- 6 (5) The monitoring of the practice by a supervisor approved by the
- 7 disciplining authority;
- 8 (6) Censure or reprimand;
- 9 (7) Compliance with conditions of probation for a designated period
- 10 of time;
- 11 (8) Payment of a fine for each violation of this chapter, not to
- 12 exceed ((one)) five thousand dollars per violation. Funds received
- 13 shall be placed in the health professions account;
- 14 (9) Denial of the license request;
- 15 (10) Corrective action;
- 16 (11) Refund of fees billed to and collected from the consumer.

17 Any of the actions under this section may be totally or partly
18 stayed by the disciplining authority. In determining what action is
19 appropriate, the disciplining authority must first consider what
20 sanctions are necessary to protect or compensate the public. Only
21 after such provisions have been made may the disciplining authority
22 consider and include in the order requirements designed to rehabilitate
23 the license holder or applicant. All costs associated with compliance
24 with orders issued under this section are the obligation of the license
25 holder or applicant.

26 The licensee or applicant may enter into a stipulated disposition
27 of charges that includes one or more of the sanctions of this section,
28 but only after a statement of charges has been issued and the licensee
29 has been afforded the opportunity for a hearing and has elected on the
30 record to forego such a hearing. The stipulation shall either contain
31 one or more specific findings of unprofessional conduct or inability to
32 practice, or a statement by the licensee acknowledging that evidence is
33 sufficient to justify one or more specified findings of unprofessional
34 conduct or inability to practice. The stipulation entered into
35 pursuant to this subsection shall be considered formal disciplinary
36 action for all purposes.

37 NEW SECTION. Sec. 7. A new section is added to chapter 18.130 RCW
38 to read as follows:

1 (1) Prior to serving a statement of charges under RCW 18.130.090 or
2 18.130.170, the disciplinary authority may furnish a statement of
3 allegations to the licensee or applicant along with a detailed summary
4 of the evidence relied upon to establish the allegations and a proposed
5 stipulation for informal resolution of the allegations. These
6 documents shall be exempt from public disclosure until such time as the
7 allegations are resolved either by stipulation or otherwise.

8 (2) The disciplinary authority and the applicant or licensee may
9 stipulate that the allegations may be disposed of informally in
10 accordance with this subsection. The stipulation shall contain a
11 statement of the facts leading to the filing of the complaint; the act
12 or acts of unprofessional conduct alleged to have been committed or
13 the alleged basis for determining that the applicant or licensee is
14 unable to practice with reasonable skill and safety; a statement that
15 the stipulation is not to be construed as a finding of either
16 unprofessional conduct or inability to practice; an acknowledgement
17 that a finding of unprofessional conduct or inability to practice, if
18 proven, constitutes grounds for discipline under this chapter; and an
19 agreement on the part of the licensee or applicant that the sanctions
20 set forth in RCW 18.130.160, except RCW 18.130.160 (1), (2), (6), and
21 (8), may be imposed as part of the stipulation, except that no fine may
22 be imposed but the licensee or applicant may agree to reimburse the
23 disciplinary authority the costs of investigation and processing the
24 complaint up to an amount not exceeding one thousand dollars per
25 allegation; and an agreement on the part of the disciplinary authority
26 to forego further disciplinary proceedings concerning the allegations.
27 A stipulation entered into pursuant to this subsection shall not be
28 considered formal disciplinary action.

29 (3) If the licensee or applicant declines to agree to disposition
30 of the charges by means of a stipulation pursuant to subsection (2) of
31 this section, the disciplinary authority may proceed to formal
32 disciplinary action pursuant to RCW 18.130.090 or 18.130.170.

33 (4) Upon execution of a stipulation under subsection (2) of this
34 section by both the licensee or applicant and the disciplinary
35 authority, the complaint is deemed disposed of and shall become subject
36 to public disclosure on the same basis and to the same extent as other
37 records of the disciplinary authority. Should the licensee or
38 applicant fail to pay any agreed reimbursement within thirty days of
39 the date specified in the stipulation for payment, the disciplinary

1 authority may seek collection of the amount agreed to be paid in the
2 same manner as enforcement of a fine under RCW 18.130.165.

3 **Sec. 8.** RCW 18.130.185 and 1987 c 150 s 8 are each amended to read
4 as follows:

5 If a person or business regulated by this chapter violates RCW
6 18.130.170 or 18.130.180, the attorney general, any prosecuting
7 attorney, the (~~director~~) secretary, the board, or any other person
8 may maintain an action in the name of the state of Washington to enjoin
9 the person from committing the violations. The injunction shall not
10 relieve the offender from criminal prosecution, but the remedy by
11 injunction shall be in addition to the liability of the offender to
12 criminal prosecution and disciplinary action.

13 **Sec. 9.** RCW 18.130.186 and 1989 c 125 s 3 are each amended to read
14 as follows:

15 (1) To implement a substance abuse monitoring program for license
16 holders specified under RCW 18.130.040, who are impaired by substance
17 abuse, the disciplinary authority may enter into a contract with a
18 voluntary substance abuse program under RCW 18.130.175. The program
19 may include any or all of the following:

- 20 (a) Contracting with providers of treatment programs;
21 (b) Receiving and evaluating reports of suspected impairment from
22 any source;
23 (c) Intervening in cases of verified impairment;
24 (d) Referring impaired license holders to treatment programs;
25 (e) Monitoring the treatment and rehabilitation of impaired license
26 holders including those ordered by the disciplinary authority;
27 (f) Providing education, prevention of impairment, posttreatment
28 monitoring, and support of rehabilitated impaired license holders; and
29 (g) Performing other activities as agreed upon by the disciplinary
30 authority.

31 (2) A contract entered into under subsection (1) of this section
32 may be financed by a surcharge on each license issuance or renewal to
33 be collected by the department of (~~licensing~~) health from the license
34 holders of the same regulated health profession. These moneys shall be
35 placed in the health professions account to be used solely for the
36 implementation of the program.

1 **Sec. 10.** RCW 18.130.300 and 1984 c 279 s 21 are each amended to
2 read as follows:

3 The ~~((director))~~ secretary, members of the boards, or individuals
4 acting on their behalf are immune from suit in any action, civil or
5 criminal, based on any disciplinary proceedings or other official acts
6 performed in the course of their duties.

7 **Sec. 11.** RCW 18.135.070 and 1984 c 281 s 7 are each amended to
8 read as follows:

9 The licensing authority of health care facilities or the
10 ~~((disciplinary board))~~ disciplining authority of the delegating or
11 supervising health care practitioner shall investigate all complaints
12 or allegations of violations of proper certification of a health care
13 assistant or violations of delegation of authority or supervision. A
14 substantiated violation shall constitute sufficient cause for
15 disciplinary action by the licensing authority of a health care
16 facility or the ~~((disciplinary board))~~ disciplining authority of the
17 health care practitioner.

18 NEW SECTION. **Sec. 12.** A new section is added to chapter 18.135
19 RCW to read as follows:

20 The uniform disciplinary act, chapter 18.130 RCW, governs
21 uncertified practice, the issuance and denial of certificates, and the
22 discipline of certificate holders under this chapter. The secretary
23 shall be the disciplining authority under this chapter.

24 **Sec. 13.** RCW 18.64.160 and 1985 c 7 s 60 are each amended to read
25 as follows:

26 In addition to the grounds under RCW 18.130.170 and 18.130.180, the
27 board of pharmacy ~~((shall have the power to refuse, suspend, or~~
28 ~~revoke))~~ may take disciplinary action against the license of any
29 pharmacist or intern upon proof that:

30 (1) His or her license was procured through fraud,
31 misrepresentation, or deceit;

32 (2) ~~((He or she has been convicted of a felony relating to his or~~
33 ~~her practice as a pharmacist;~~

34 ~~(3) He or she has committed any act involving moral turpitude,~~
35 ~~dishonesty, or corruption, if the act committed directly relates to the~~
36 ~~pharmacist's fitness to practice pharmacy. Upon such conviction,~~

1 however, the judgment and sentence shall be conclusive evidence at the
2 ensuing disciplinary hearing of the guilt of the respondent pharmacist
3 of the crime described in the indictment or information, and of his or
4 her violation of the statute upon which it is based;

5 ~~(4) He or she is unfit to practice pharmacy because of habitual~~
6 ~~intemperance in the use of alcoholic beverages, drugs, controlled~~
7 ~~substances, or any other substance which impairs the performance of~~
8 ~~professional duties;~~

9 ~~(5) He or she exhibits behavior which may be due to physical or~~
10 ~~mental impairment, which creates an undue risk of causing harm to him~~
11 ~~or herself or to other persons when acting as a licensed pharmacist or~~
12 ~~intern;~~

13 ~~(6) He or she has incompetently or negligently practiced pharmacy,~~
14 ~~creating an unreasonable risk of harm to any individual;~~

15 ~~(7) His or her legal authority to practice pharmacy, issued by any~~
16 ~~other properly constituted licensing authority of any other state, has~~
17 ~~been and is currently suspended or revoked;~~

18 ~~(8))~~ In the event that a pharmacist is determined by a court of
19 competent jurisdiction to be mentally incompetent, the pharmacist shall
20 automatically have his or her license suspended by the board upon the
21 entry of the judgment, regardless of the pendency of an appeal;

22 ~~((9))~~ (3) He or she has knowingly violated or permitted the
23 violation of any provision of any state or federal law, rule, or
24 regulation governing the possession, use, distribution, or dispensing
25 of drugs, including, but not limited to, the violation of any provision
26 of this chapter, Title 69 RCW, or rule or regulation of the board;

27 ~~((10))~~ (4) He or she has knowingly allowed any unlicensed person
28 to take charge of a pharmacy or engage in the practice of pharmacy,
29 except a pharmacy intern or pharmacy assistant acting as authorized in
30 this chapter or chapter 18.64A RCW in the presence of and under the
31 immediate supervision of a licensed pharmacist;

32 ~~((11))~~ (5) He or she has compounded, dispensed, or caused the
33 compounding or dispensing of any drug or device which contains more or
34 less than the equivalent quantity of ingredient or ingredients
35 specified by the person who prescribed such drug or device: PROVIDED,
36 HOWEVER, That nothing herein shall be construed to prevent the
37 pharmacist from exercising professional judgment in the preparation or
38 providing of such drugs or devices.

1 (~~In any case of the refusal, suspension, or revocation of a~~
2 ~~license by said board of pharmacy under the provisions of this chapter,~~
3 ~~said board shall proceed in accordance with chapter 34.05 RCW.))~~)

4 NEW SECTION. Sec. 14. A new section is added to chapter 18.64 RCW
5 to read as follows:

6 The uniform disciplinary act, chapter 18.130 RCW, governs
7 unlicensed practice, the issuance and denial of licenses of pharmacists
8 and pharmacy interns, and the discipline of licensed pharmacists and
9 pharmacy interns under this chapter.

10 **Sec. 15.** RCW 18.64A.050 and 1989 1st ex.s. c 9 s 424 are each
11 amended to read as follows:

12 In addition to the grounds under RCW 18.130.170 and 18.130.180, the
13 board of pharmacy (~~shall have the power to refuse, suspend, or~~
14 ~~revoke~~) may take disciplinary action against the certificate of any
15 pharmacy assistant upon proof that:

16 (1) His or her certificate was procured through fraud,
17 misrepresentation or deceit;

18 (2) He or she has been found guilty of any offense in violation of
19 the laws of this state relating to drugs, poisons, cosmetics or drug
20 sundries by any court of competent jurisdiction. Nothing herein shall
21 be construed to affect or alter the provisions of RCW 9.96A.020;

22 (3) (~~He or she is unfit to perform his or her duties because of~~
23 ~~habitual intoxication or abuse of controlled substances;~~

24 ~~(4))~~) He or she has exhibited gross incompetency in the performance
25 of his or her duties;

26 (~~(5))~~) (4) He or she has willfully or repeatedly violated any of
27 the rules and regulations of the board of pharmacy or of the
28 department;

29 (~~(6))~~) (5) He or she has willfully or repeatedly performed duties
30 beyond the scope of his or her certificate in violation of the
31 provisions of this chapter; or

32 (~~(7))~~) (6) He or she has impersonated a licensed pharmacist.

33 (~~In any case of the refusal, suspension or revocation of a~~
34 ~~certificate by the board, a hearing shall be conducted in accordance~~
35 ~~with RCW 18.64.160, as now or hereafter amended, and appeal may be~~
36 ~~taken in accordance with the Administrative Procedure Act, chapter~~
37 ~~34.05 RCW.))~~)

1 NEW SECTION. **Sec. 16.** A new section is added to chapter 18.64A
2 RCW to read as follows:

3 The uniform disciplinary act, chapter 18.130 RCW, governs the
4 issuance and denial of certificates and the discipline of certificants
5 under this chapter.

6 **Sec. 17.** RCW 18.72.340 and 1986 c 300 s 6 are each amended to read
7 as follows:

8 (1) Every institution or organization providing professional
9 liability insurance to physicians shall send a complete report to the
10 medical disciplinary board of all malpractice settlements, awards, or
11 payments in excess of (~~twenty~~) one hundred thousand dollars as a
12 result of a claim or action for damages alleged to have been caused by
13 an insured physician's incompetency or negligence in the practice of
14 medicine. Such institution or organization shall also report the
15 award, settlement, or payment of three or more claims during a (~~year~~)
16 five-year time period as the result of the alleged physician's
17 incompetence or negligence in the practice of medicine regardless of
18 the dollar amount of the award or payment.

19 (2) Reports required by this section shall be made within sixty
20 days of the date of the settlement or verdict. Failure to comply with
21 this section is punishable by a civil penalty not to exceed two hundred
22 fifty dollars.

23 **Sec. 18.** RCW 18.72.380 and 1991 c 3 s 170 are each amended to read
24 as follows:

25 There is hereby levied to be collected by the department of health
26 from every physician and surgeon licensed pursuant to chapter 18.71 RCW
27 and every physician assistant licensed pursuant to chapter 18.71A RCW
28 an annual medical disciplinary assessment equal to the license renewal
29 fee established under RCW 43.70.250. The assessment levied pursuant to
30 this (~~subsection~~) section is in addition to any license renewal fee
31 established under RCW 43.70.250.

32 **Sec. 19.** RCW 18.130.190 and 1991 c 3 s 271 are each amended to
33 read as follows:

34 (1) The secretary shall investigate complaints concerning practice
35 by unlicensed persons of a profession or business for which a license
36 is required by the chapters specified in RCW 18.130.040. In the

1 investigation of the complaints, the secretary shall have the same
2 authority as provided the secretary under RCW 18.130.050. ((The
3 secretary shall issue a cease and desist order to a person after notice
4 and hearing and upon a determination that the person has violated this
5 subsection.))

6 (2) The secretary may issue a notice of intention to issue a cease
7 and desist order to any person whom the secretary has reason to believe
8 is engaged in the unlicensed practice of a profession or business for
9 which a license is required by the chapters specified in RCW
10 18.130.040. The person to whom such notice is issued may request an
11 adjudicative proceeding to contest the charges. The request for
12 hearing must be filed within twenty days after service of the notice of
13 intention to issue a cease and desist order. The failure to request a
14 hearing constitutes a default, whereupon the secretary may enter a
15 permanent cease and desist order, which may include a civil fine. All
16 proceedings shall be conducted in accordance with chapter 34.05 RCW.

17 (3) If the secretary makes a final determination that a person has
18 engaged or is engaging in unlicensed practice, the secretary may issue
19 a cease and desist order. In addition, the secretary may impose a
20 civil fine in an amount not exceeding one thousand dollars for each day
21 upon which the person engaged in unlicensed practice of a business or
22 profession for which a license is required by one or more of the
23 chapters specified in RCW 18.130.040. The proceeds of such fines shall
24 be deposited to the health professions account.

25 (4) If the secretary makes a written finding of fact that the
26 public interest will be irreparably harmed by delay in issuing an
27 order, the secretary may issue a temporary cease and desist order. The
28 person receiving a temporary cease and desist order shall be provided
29 an opportunity for a prompt hearing. The temporary cease and desist
30 order shall remain in effect until further order of the secretary. The
31 failure to request a prompt or regularly scheduled hearing constitutes
32 a default, whereupon the secretary may enter a permanent cease and
33 desist order, which may include a civil fine.

34 (5) Neither the issuance of a cease and desist order nor payment of
35 a civil fine shall ((not)) relieve the person so practicing or
36 operating a business without a license from criminal prosecution
37 therefor, but the remedy of a cease and desist order or civil fine
38 shall be in addition to any criminal liability. The cease and desist
39 order is conclusive proof of unlicensed practice and may be enforced

1 under RCW 7.21.060. This method of enforcement of the cease and desist
2 order or civil fine may be used in addition to, or as an alternative
3 to, any provisions for enforcement of agency orders set out in chapter
4 34.05 RCW.

5 ~~((+2))~~ (6) The attorney general, a county prosecuting attorney,
6 the secretary, a board, or any person may in accordance with the laws
7 of this state governing injunctions, maintain an action in the name of
8 this state to enjoin any person practicing a profession or business for
9 which a license is required by the chapters specified in RCW 18.130.040
10 without a license from engaging in such practice or operating such
11 business until the required license is secured. However, the
12 injunction shall not relieve the person so practicing or operating a
13 business without a license from criminal prosecution therefor, but the
14 remedy by injunction shall be in addition to any criminal liability.

15 ~~((+3))~~ (7) Unlicensed practice of a profession or operating a
16 business for which a license is required by the chapters specified in
17 RCW 18.130.040, unless otherwise exempted by law, constitutes a gross
18 misdemeanor. All fees, fines, forfeitures, and penalties collected or
19 assessed by a court because of a violation of this section shall be
20 remitted to the health professions account.

21 **Sec. 20.** RCW 18.130.165 and 1987 c 150 s 4 are each amended to
22 read as follows:

23 Where an order for payment of a fine is made as a result of a
24 hearing under RCW 18.130.100 or 18.130.190 and timely payment is not
25 made as directed in the final order, the disciplining authority may
26 enforce the order for payment in the superior court in the county in
27 which the hearing was held. This right of enforcement shall be in
28 addition to any other rights the disciplining authority may have as to
29 any licensee ordered to pay a fine but shall not be construed to limit
30 a licensee's ability to seek judicial review under RCW 18.130.140.

31 In any action for enforcement of an order of payment of a fine, the
32 disciplining authority's order is conclusive proof of the validity of
33 the order of payment of a fine and the terms of payment.

34 **Sec. 21.** RCW 18.130.050 and 1987 c 150 s 2 are each amended to
35 read as follows:

36 The disciplining authority has the following authority:

- 1 (1) To adopt, amend, and rescind such rules as are deemed necessary
2 to carry out this chapter;
- 3 (2) To investigate all complaints or reports of unprofessional
4 conduct as defined in this chapter and to hold hearings as provided in
5 this chapter;
- 6 (3) To issue subpoenas and administer oaths in connection with any
7 investigation, hearing, or proceeding held under this chapter;
- 8 (4) To take or cause depositions to be taken and use other
9 discovery procedures as needed in any investigation, hearing, or
10 proceeding held under this chapter;
- 11 (5) To compel attendance of witnesses at hearings;
- 12 (6) In the course of investigating a complaint or report of
13 unprofessional conduct, to conduct practice reviews;
- 14 (7) To take emergency action ordering summary suspension of a
15 license, or restriction or limitation of the licensee's practice
16 pending proceedings by the disciplining authority;
- 17 (8) To use the office of administrative hearings as authorized in
18 chapter 34.12 RCW to conduct hearings. However, the disciplining
19 authority shall make the final decision regarding disposition of the
20 license;
- 21 (9) To use individual members of the boards to direct
22 investigations. However, the member of the board shall not
23 subsequently participate in the hearing of the case;
- 24 (10) To enter into contracts for professional services determined
25 to be necessary for adequate enforcement of this chapter;
- 26 (11) To contract with licensees or other persons or organizations
27 to provide services necessary for the monitoring and supervision of
28 licensees who are placed on probation, whose professional activities
29 are restricted, or who are for any authorized purpose subject to
30 monitoring by the disciplining authority;
- 31 (12) To adopt standards of professional conduct or practice;
- 32 (13) To grant or deny license applications, and in the event of a
33 finding of unprofessional conduct by an applicant or license holder, to
34 impose any sanction against a license applicant or license holder
35 provided by this chapter;
- 36 (14) To enter into an assurance of discontinuance in lieu of
37 issuing a statement of charges or conducting a hearing. The assurance
38 shall consist of a statement of the law in question and an agreement to
39 not violate the stated provision. The applicant or license holder

1 shall not be required to admit to any violation of the law, nor shall
2 the assurance be construed as such an admission. Violation of an
3 assurance under this subsection is grounds for disciplinary action;

4 (15) To designate individuals authorized to sign subpoenas and
5 statements of charges;

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

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

17 **Sec. 22.** RCW 18.130.180 and 1991 c 332 s 34 and 1991 c 215 c 3 are
18 each reenacted and amended to read as follows:

19 The following conduct, acts, or conditions constitute
20 unprofessional conduct for any license holder or applicant under the
21 jurisdiction of this chapter:

22 (1) The commission of any act involving moral turpitude,
23 dishonesty, or corruption relating to the practice of the person's
24 profession, whether the act constitutes a crime or not. If the act
25 constitutes a crime, conviction in a criminal proceeding is not a
26 condition precedent to disciplinary action. Upon such a conviction,
27 however, the judgment and sentence is conclusive evidence at the
28 ensuing disciplinary hearing of the guilt of the license holder or
29 applicant of the crime described in the indictment or information, and
30 of the person's violation of the statute on which it is based. For the
31 purposes of this section, conviction includes all instances in which a
32 plea of guilty or nolo contendere is the basis for the conviction and
33 all proceedings in which the sentence has been deferred or suspended.
34 Nothing in this section abrogates rights guaranteed under chapter 9.96A
35 RCW;

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

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

1 (4) Incompetence, negligence, or malpractice which results in
2 injury to a patient or which creates an unreasonable risk that a
3 patient may be harmed. The use of a nontraditional treatment by itself
4 shall not constitute unprofessional conduct, provided that it does not
5 result in injury to a patient or create an unreasonable risk that a
6 patient may be harmed;

7 (5) Suspension, revocation, or restriction of the individual's
8 license to practice the profession by competent authority in any state,
9 federal, or foreign jurisdiction, a certified copy of the order,
10 stipulation, or agreement being conclusive evidence of the revocation,
11 suspension, or restriction;

12 (6) The possession, use, prescription for use, or distribution of
13 controlled substances or legend drugs in any way other than for
14 legitimate or therapeutic purposes, diversion of controlled substances
15 or legend drugs, the violation of any drug law, or prescribing
16 controlled substances for oneself;

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

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

22 (a) Not furnishing any papers or documents;

23 (b) Not furnishing in writing a full and complete explanation
24 covering the matter contained in the complaint filed with the
25 disciplining authority; or

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

29 (9) Failure to comply with an order issued by the ~~((disciplining))~~
30 disciplinary authority or ~~((an assurance of discontinuance))~~ a
31 stipulation for informal disposition entered into with the
32 ~~((disciplining))~~ disciplinary authority;

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

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

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

38 (13) Misrepresentation or fraud in any aspect of the conduct of the
39 business or profession;

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

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

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

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

14 (18) The procuring, or aiding or abetting in procuring, a criminal
15 abortion;

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

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

23 (21) Violation of chapter 19.68 RCW;

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

30 (23) Current misuse of:

31 (a) Alcohol;

32 (b) Controlled substances; or

33 (c) Legend drugs;

34 (24) Abuse of a client or patient or sexual contact with a client
35 or patient;

36 (25) Acceptance of more than a nominal gratuity, hospitality, or
37 subsidy offered by a representative or vendor of medical or health-
38 related products or services intended for patients, in contemplation of
39 a sale or for use in research publishable in professional journals,

1 where a conflict of interest is presented, as defined by rules of the
2 disciplining authority, in consultation with the department, based on
3 recognized professional ethical standards.

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

6 (1) RCW 18.135.080 and 1991 c 3 s 277 & 1984 c 281 s 8;

7 (2) RCW 18.64.260 and 1987 c 202 s 184, 1969 ex.s. c 199 s 17, 1909
8 c 213 s 9, & 1899 c 121 s 17; and

9 (3) RCW 18.71A.070 and 1990 c 196 s 7, 1979 c 158 s 58, & 1975 1st
10 ex.s. c 190 s 3."

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