

---

ENGROSSED SUBSTITUTE SENATE BILL 5948

---

State of Washington

53rd Legislature

1993 Regular Session

By Senate Committee on Health & Human Services (originally sponsored by Senators Deccio, Talmadge, Franklin, Prentice and McCaslin)

Read first time 03/03/93.

1 AN ACT Relating to procedures for responding to violations of the  
2 uniform disciplinary act; amending RCW 18.130.090 and 18.130.175; and  
3 adding a new section to chapter 18.130 RCW.

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

5 **Sec. 1.** RCW 18.130.090 and 1986 c 259 s 6 are each amended to read  
6 as follows:

7 ~~((+1))~~ If the disciplining authority determines, upon  
8 investigation, that there is reason to believe a violation of RCW  
9 18.130.180 has occurred, a statement of charge or charges shall be  
10 prepared and served upon the license holder or applicant at the  
11 earliest practical time. The statement of charge or charges shall be  
12 accompanied by a notice that the license holder or applicant may  
13 request a hearing to contest the charge or charges. The license holder  
14 or applicant must file a request for hearing with the disciplining  
15 authority within twenty days after being served the statement of  
16 charges. ~~((The failure to request a hearing constitutes a default,  
17 whereupon the disciplining authority may enter a decision on the basis  
18 of the facts available to it.~~

1       ~~(2) If a hearing is requested, the time of the hearing shall be~~  
2 ~~fixed by the disciplining authority as soon as convenient, but the~~  
3 ~~hearing shall not be held earlier than thirty days after service of the~~  
4 ~~charges upon the license holder or applicant. A notice of hearing~~  
5 ~~shall be issued at least twenty days prior to the hearing, specifying~~  
6 ~~the time, date, and place of the hearing. The notice shall also notify~~  
7 ~~the license holder or applicant that a record of the proceeding will be~~  
8 ~~kept, that he or she will have the opportunity to appear personally and~~  
9 ~~to have counsel present, with the right to produce witnesses, who will~~  
10 ~~be subject to cross examination, and evidence in his or her own behalf,~~  
11 ~~to cross examine witnesses testifying against him or her, to examine~~  
12 ~~such documentary evidence as may be produced against him or her, to~~  
13 ~~conduct depositions, and to have subpoenas issued by the disciplining~~  
14 ~~authority.))~~ If the twenty-day limit results in a hardship upon the  
15 license holder or applicant, he or she may request for good cause an  
16 extension not to exceed sixty additional days. If the disciplining  
17 authority finds that there is good cause, it shall grant the extension.

18       NEW SECTION. Sec. 2. A new section is added to chapter 18.130 RCW  
19 to read as follows:

20       REQUIRED UNIFORM PROCEDURES. (1) The secretary shall develop  
21 uniform procedural rules to respond to public inquiries concerning  
22 complaints and their disposition, active investigations, statement of  
23 charges, findings of fact, and final orders involving a licensee,  
24 applicant, or unlicensed person. The uniform procedural rules adopted  
25 under this subsection apply to all adjudicative proceedings conducted  
26 under this chapter and shall include provisions for the establishing  
27 time lines for discovery, settlement, and scheduling hearings.

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

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

36       (b) From a witness or potential witness in an investigation under  
37 this chapter, the investigator shall inform the person, in writing,  
38 that the statement may be released to the licensee, applicant, or

1 unlicensed person under investigation if a statement of charges is  
2 issued.

3 (3) The disciplining authority may enter into an agreement to  
4 dispose of a matter with or without a finding of unprofessional conduct  
5 or inability to practice, which may include one or more sanctions set  
6 forth in RCW 18.130.160. When the representative of the disciplining  
7 authority and the respondent have entered into a written settlement  
8 agreement, such agreement shall be submitted to the disciplining  
9 authority for approval. In considering whether to approve the  
10 settlement, the disciplining authority may consider such written  
11 materials as the parties may agree. If no settlement is approved by  
12 the disciplining authority and the matter proceeds to a hearing, a  
13 person who participated in the decision not to approve the proposed  
14 settlement may not participate as a hearing officer or board panel  
15 member in the hearing.

16 (4) In order to assure the uniform application of the procedural  
17 rules developed by the secretary, the secretary or his or her designee  
18 shall serve as presiding officer for all proceedings under this  
19 chapter, including those conducted by disciplinary authorities  
20 identified in RCW 18.130.040(2)(b), other than the board of funeral  
21 directors and embalmers, and shall perform all functions of the  
22 presiding officer under chapter 34.05 RCW. In those areas where the  
23 disciplining authority is a board, the secretary or his or her  
24 designee, shall not vote on the final decision.

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

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

32 The cost of the treatment shall be the responsibility of the  
33 license holder, but the responsibility does not preclude payment by an  
34 employer, existing insurance coverage, or other sources. Primary  
35 alcoholism or drug treatment shall be provided by approved treatment  
36 ((facilities)) programs under RCW ((70.96A.020(2))) 70.96A.020:  
37 PROVIDED, That nothing shall prohibit the disciplining authority from  
38 approving additional services and programs as an adjunct to primary

1 alcoholism or drug treatment. The disciplining authority may also  
2 approve the use of out-of-state programs. Referral of the license  
3 holder to the program shall be done only with the consent of the  
4 license holder. Referral to the program may also include probationary  
5 conditions for a designated period of time. If the license holder does  
6 not consent to be referred to the program or does not successfully  
7 complete the program, the disciplining authority may take appropriate  
8 action under RCW 18.130.160. If the license holder has a program  
9 violation that in the opinion of the monitoring program does not affect  
10 the continuing ability to practice, and program records indicate  
11 continuing progress toward the successful completion of the program,  
12 the disciplinary authority shall encourage the license holder to  
13 continue participation in the program and may impose additional  
14 conditions on the license holder, but shall not take action under RCW  
15 18.130.160 unless the license holder is deemed unable to continue to  
16 practice with reasonable skill and safety under the conditions imposed  
17 on his or her license.

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

29 (3) The license holder shall sign a waiver allowing the program to  
30 release information to the disciplining authority if the licensee does  
31 not comply with the requirements of this section or is unable to  
32 practice with reasonable skill or safety. The substance abuse program  
33 shall report to the disciplining authority any license holder who fails  
34 to comply with the requirements of this section or the program or who,  
35 in the opinion of the program, is unable to practice with reasonable  
36 skill or safety. License holders shall report to the disciplining  
37 authority if they fail to comply with this section or do not complete  
38 the program's requirements. License holders may, upon the agreement of

1 the program and disciplining authority, reenter the program if they  
2 have previously failed to comply with this section.

3 (4) The treatment and pretreatment records of license holders  
4 referred to or voluntarily participating in approved programs shall be  
5 confidential, shall be exempt from RCW 42.17.250 through 42.17.450, and  
6 shall not be subject to discovery by subpoena or admissible as evidence  
7 except for monitoring records reported to the disciplining authority  
8 for cause as defined in subsection (3) of this section. Monitoring  
9 records relating to license holders referred to the program by the  
10 disciplining authority or relating to license holders reported to the  
11 disciplining authority by the program for cause, shall be released to  
12 the disciplining authority at the request of the disciplining  
13 authority. Records held by the disciplining authority under this  
14 section shall be exempt from RCW 42.17.250 through 42.17.450 and shall  
15 not be subject to discovery by subpoena except by the license holder.

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

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

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

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

- 30 (i) An approved monitoring treatment program;
- 31 (ii) The professional association operating the program;
- 32 (iii) Members, employees, or agents of the program or association;
- 33 (iv) Persons reporting a license holder as being impaired or  
34 providing information about the license holder's impairment; and
- 35 (v) Professionals supervising or monitoring the course of the  
36 impaired license holder's treatment or rehabilitation.

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

1       (8) In addition to health care professionals governed by this  
2 chapter, this section also applies to pharmacists under chapter 18.64  
3 RCW and pharmacy assistants under chapter 18.64A RCW. For that  
4 purpose, the board of pharmacy shall be deemed to be the disciplining  
5 authority and the substance abuse monitoring program shall be in lieu  
6 of disciplinary action under RCW 18.64.160 or 18.64A.050. The board of  
7 pharmacy shall adjust license fees to offset the costs of this program.

--- END ---