
SENATE BILL 5948

State of Washington

53rd Legislature

1993 Regular Session

By Senators Deccio, Talmadge, Franklin, Prentice and McCaslin

Read first time 03/02/93. Referred to Committee on Health & Human Services.

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;
3 adding a new section to chapter 18.130 RCW; and creating a new section.

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 DISCIPLINARY AUTHORITY--REQUIRED UNIFORM PROCEDURES. In the
21 performance of its responsibilities under this chapter, the
22 disciplinary authority shall:

23 (1) Develop a uniform procedure to respond to public inquiries
24 concerning complaints and their disposition, active investigations,
25 statement of charges, and findings of fact and final orders involving
26 a licensee, applicant, or unlicensed person provided that public
27 release of information related to disciplinary actions or violations of
28 this chapter are limited to revocations of licenses. Suspension of a
29 license or other conditions placed upon a license are not subject to
30 public release;

31 (2) Upon making contact with a licensee, applicant, or unlicensed
32 person for the purpose of investigation of a complaint, inform the
33 licensee, applicant, or unlicensed person of the nature of the
34 complaint and the individual's right to obtain legal counsel prior to
35 responding to any inquiries by the disciplinary authority. The
36 licensee, applicant, or unlicensed person shall also be informed that
37 responses to the disciplinary authority's inquiries may be used in
38 adjudicative proceedings;

1 (3) Upon issuance of a statement of charges to the licensee,
2 applicant, or unlicensed person, provide full disclosure of pertinent
3 records and other supporting information used in the investigation;

4 (4) Develop a uniform procedure for the timely and complete
5 response to a licensee, applicant, or unlicensed person request for
6 discovery, including reasonable interrogatories, request for production
7 and depositions, and reasonable and appropriate request for department
8 staff consultation concerning the investigation of the licensee,
9 applicant, or unlicensed person;

10 (5) Not prohibit a licensee, applicant, or unlicensed person from
11 agreeing to sanctions without admitting to a violation of this chapter;

12 (6) Honor a settlement concerning violations of this chapter with
13 a licensee, applicant, or unlicensed person agreed to prior to a
14 hearing, except that such settlements may be disapproved by the
15 disciplinary authority for good cause. In any case, a licensee,
16 applicant, or unlicensed person shall not be denied a hearing in
17 accordance with chapter 34.05 RCW;

18 (7) Inform witnesses in an investigation that their responses to
19 inquiries may be released to the licensee, applicant, or unlicensed
20 person under investigation should a statement of charges be issued by
21 the disciplinary authority;

22 (8) Comply with restrictions on ex parte communications as provided
23 for under RCW 34.05.455.

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

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

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

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

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

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

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

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

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

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

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

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

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

37 (8) In addition to health care professionals governed by this
38 chapter, this section also applies to pharmacists under chapter 18.64
39 RCW and pharmacy assistants under chapter 18.64A RCW. For that

1 purpose, the board of pharmacy shall be deemed to be the disciplining
2 authority and the substance abuse monitoring program shall be in lieu
3 of disciplinary action under RCW 18.64.160 or 18.64A.050. The board of
4 pharmacy shall adjust license fees to offset the costs of this program.

5 NEW SECTION. **Sec. 4.** This act applies to all actions pending or
6 in process before a disciplinary authority on January 1, 1993, or all
7 actions initiated by a disciplinary authority on or after January 1,
8 1993, regardless of when the cause of action may have arisen. To this
9 extent, this act applies retroactively, but in all other respects it
10 applies prospectively.

--- END ---