

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE SENATE BILL 5948

Chapter 367, Laws of 1993

53rd Legislature
1993 Regular Session

UNIFORM DISCIPLINARY ACT--RESPONSE TO VIOLATIONS

EFFECTIVE DATE: 7/25/93

Passed by the Senate April 24, 1993
YEAS 43 NAYS 0

JOEL PRITCHARD
President of the Senate

Passed by the House April 24, 1993
YEAS 93 NAYS 0

BRIAN EBERSOLE
**Speaker of the
House of Representatives**

Approved May 15, 1993

MIKE LOWRY
Governor of the State of Washington

CERTIFICATE

I, Marty Brown, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE SENATE BILL 5948** as passed by the Senate and the House of Representatives on the dates hereon set forth.

MARTY BROWN
Secretary

FILED

May 15, 1993 - 11:08 a.m.

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE SENATE BILL 5948

AS RECOMMENDED BY THE CONFERENCE COMMITTEE

Passed Legislature - 1993 Regular Session

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, 18.130.175,
3 18.130.040, 18.130.050, 18.130.160, 18.130.185, 18.130.186, 18.130.300,
4 18.135.070, 18.64.160, 18.64A.050, 18.72.340, 18.72.380, 18.130.190,
5 18.130.165, and 18.130.050; reenacting and amending RCW 18.130.180;
6 adding new sections to chapter 18.130 RCW; adding a new section to
7 chapter 18.135 RCW; adding a new section to chapter 18.64 RCW; adding
8 a new section to chapter 18.64A RCW; and repealing RCW 18.135.080,
9 18.64.260, and 18.71A.070.

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

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

13 (1) If the disciplining authority determines, upon investigation,
14 that there is reason to believe a violation of RCW 18.130.180 has
15 occurred, a statement of charge or charges shall be prepared and served
16 upon the license holder or applicant at the earliest practical time.
17 The statement of charge or charges shall be accompanied by a notice
18 that the license holder or applicant may request a hearing to contest
19 the charge or charges. The license holder or applicant must file a

1 request for hearing with the disciplining authority within twenty days
2 after being served the statement of charges. If the twenty-day limit
3 results in a hardship upon the license holder or applicant, he or she
4 may request for good cause an extension not to exceed sixty additional
5 days. If the disciplining authority finds that there is good cause, it
6 shall grant the extension. The failure to request a hearing
7 constitutes a default, whereupon the disciplining authority may enter
8 a decision on the basis of the facts available to it.

9 (2) If a hearing is requested, the time of the hearing shall be
10 fixed by the disciplining authority as soon as convenient, but the
11 hearing shall not be held earlier than thirty days after service of the
12 charges upon the license holder or applicant. ~~((A notice of hearing~~
13 ~~shall be issued at least twenty days prior to the hearing, specifying~~
14 ~~the time, date, and place of the hearing. The notice shall also notify~~
15 ~~the license holder or applicant that a record of the proceeding will be~~
16 ~~kept, that he or she will have the opportunity to appear personally and~~
17 ~~to have counsel present, with the right to produce witnesses, who will~~
18 ~~be subject to cross examination, and evidence in his or her own behalf,~~
19 ~~to cross examine witnesses testifying against him or her, to examine~~
20 ~~such documentary evidence as may be produced against him or her, to~~
21 ~~conduct depositions, and to have subpoenas issued by the disciplining~~
22 ~~authority.))~~

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

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

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

35 (a) For violation of this chapter, the investigator shall inform
36 such person, in writing of: (i) The nature of the complaint; (ii) that
37 the person may consult with legal counsel at his or her expense prior
38 to making a statement; and (iii) that any statement that the person

1 makes may be used in an adjudicative proceeding conducted under this
2 chapter; and

3 (b) From a witness or potential witness in an investigation under
4 this chapter, the investigator shall inform the person, in writing,
5 that the statement may be released to the licensee, applicant, or
6 unlicensed person under investigation if a statement of charges is
7 issued.

8 (3) Only upon the authorization of a disciplinary authority
9 identified in RCW 18.130.040(2)(b), the secretary, or his or her
10 designee, may serve as the presiding officer for any disciplinary
11 proceedings of the disciplinary authority authorized under this
12 chapter. The presiding officer shall not vote on any final decision.
13 All functions performed by the presiding officer shall be subject to
14 chapter 34.05 RCW. The secretary, in consultation with the
15 disciplinary authorities, shall adopt procedures for implementing this
16 subsection. This subsection shall not apply to the board of funeral
17 directors and embalmers.

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

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

25 The cost of the treatment shall be the responsibility of the
26 license holder, but the responsibility does not preclude payment by an
27 employer, existing insurance coverage, or other sources. Primary
28 alcoholism or drug treatment shall be provided by approved treatment
29 ~~((facilities))~~ programs under RCW ~~((70.96A.020(2)))~~ 70.96A.020:
30 PROVIDED, That nothing shall prohibit the disciplining authority from
31 approving additional services and programs as an adjunct to primary
32 alcoholism or drug treatment. The disciplining authority may also
33 approve the use of out-of-state programs. Referral of the license
34 holder to the program shall be done only with the consent of the
35 license holder. Referral to the program may also include probationary
36 conditions for a designated period of time. If the license holder does
37 not consent to be referred to the program or does not successfully
38 complete the program, the disciplining authority may take appropriate

1 action under RCW 18.130.160. The secretary shall adopt uniform rules
2 for the evaluation by the disciplinary authority of a relapse or
3 program violation on the part of a license holder in the substance
4 abuse monitoring program. The evaluation shall encourage program
5 participation with additional conditions, in lieu of disciplinary
6 action, when the disciplinary authority determines that the license
7 holder is able to continue to practice with reasonable skill and
8 safety.

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

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

32 (4) The treatment and pretreatment records of license holders
33 referred to or voluntarily participating in approved programs shall be
34 confidential, shall be exempt from RCW 42.17.250 through 42.17.450, and
35 shall not be subject to discovery by subpoena or admissible as evidence
36 except for monitoring records reported to the disciplining authority
37 for cause as defined in subsection (3) of this section. Monitoring
38 records relating to license holders referred to the program by the
39 disciplining authority or relating to license holders reported to the

1 disciplining authority by the program for cause, shall be released to
2 the disciplining authority at the request of the disciplining
3 authority. Records held by the disciplining authority under this
4 section shall be exempt from RCW 42.17.250 through 42.17.450 and shall
5 not be subject to discovery by subpoena except by the license holder.

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

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

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

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

- 20 (i) An approved monitoring treatment program;
- 21 (ii) The professional association operating the program;
- 22 (iii) Members, employees, or agents of the program or association;
- 23 (iv) Persons reporting a license holder as being impaired or
24 providing information about the license holder's impairment; and
- 25 (v) Professionals supervising or monitoring the course of the
26 impaired license holder's treatment or rehabilitation.

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

29 ~~((8) In addition to health care professionals governed by this
30 chapter, this section also applies to pharmacists under chapter 18.64
31 RCW and pharmacy assistants under chapter 18.64A RCW. For that
32 purpose, the board of pharmacy shall be deemed to be the disciplining
33 authority and the substance abuse monitoring program shall be in lieu
34 of disciplinary action under RCW 18.64.160 or 18.64A.050. The board of
35 pharmacy shall adjust license fees to offset the costs of this
36 program.))~~

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

1 (1) This chapter applies only to the secretary and the boards
2 having jurisdiction in relation to the professions licensed under the
3 chapters specified in this section. This chapter does not apply to any
4 business or profession not licensed under the chapters specified in
5 this section.

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

8 (i) Dispensing opticians licensed under chapter 18.34 RCW;

9 (ii) Naturopaths licensed under chapter 18.36A RCW;

10 (iii) Midwives licensed under chapter 18.50 RCW;

11 (iv) Ocularists licensed under chapter 18.55 RCW;

12 (v) Massage operators and businesses licensed under chapter 18.108
13 RCW;

14 (vi) Dental hygienists licensed under chapter 18.29 RCW;

15 (vii) Acupuncturists certified under chapter 18.06 RCW;

16 (viii) Radiologic technologists certified under chapter 18.84 RCW;

17 (ix) Respiratory care practitioners certified under chapter 18.89
18 RCW;

19 (x) Persons registered or certified under chapter 18.19 RCW;

20 (xi) Persons registered as nursing pool operators;

21 (xii) Nursing assistants registered or certified under chapter
22 (~~18.52B~~) 18.88A RCW;

23 (xiii) Health care assistants certified under chapter 18.135 RCW;

24 (xiv) Dietitians and nutritionists certified under chapter 18.138
25 RCW;

26 (~~(xiv)~~) (xv) Sex offender treatment providers certified under
27 chapter 18.155 RCW; and

28 (~~(xv)~~) (xvi) Persons licensed and certified under chapter 18.73
29 RCW or RCW 18.71.205.

30 (b) The boards having authority under this chapter are as follows:

31 (i) The podiatric medical board as established in chapter 18.22
32 RCW;

33 (ii) The chiropractic disciplinary board as established in chapter
34 18.26 RCW governing licenses issued under chapter 18.25 RCW;

35 (iii) The dental disciplinary board as established in chapter 18.32
36 RCW;

37 (iv) The council on hearing aids as established in chapter 18.35
38 RCW;

1 (v) The board of funeral directors and embalmers as established in
2 chapter 18.39 RCW;

3 (vi) The board of examiners for nursing home administrators as
4 established in chapter 18.52 RCW;

5 (vii) The optometry board as established in chapter 18.54 RCW
6 governing licenses issued under chapter 18.53 RCW;

7 (viii) The board of osteopathic medicine and surgery as established
8 in chapter 18.57 RCW governing licenses issued under chapters 18.57 and
9 18.57A RCW;

10 (ix) The board of pharmacy as established in chapter 18.64 RCW
11 governing licenses issued under chapters 18.64 and 18.64A RCW;

12 (x) The medical disciplinary board as established in chapter 18.72
13 RCW governing licenses and registrations issued under chapters 18.71
14 and 18.71A RCW;

15 (~~(x)~~) (xi) The board of physical therapy as established in
16 chapter 18.74 RCW;

17 (~~(xi)~~) (xii) The board of occupational therapy practice as
18 established in chapter 18.59 RCW;

19 (~~(xii)~~) (xiii) The board of practical nursing as established in
20 chapter 18.78 RCW;

21 (~~(xiii)~~) (xiv) The examining board of psychology and its
22 disciplinary committee as established in chapter 18.83 RCW;

23 (~~(xiv)~~) (xv) The board of nursing as established in chapter 18.88
24 RCW; and

25 (~~(xv)~~) (xvi) The veterinary board of governors as established in
26 chapter 18.92 RCW.

27 (3) In addition to the authority to discipline license holders, the
28 disciplining authority has the authority to grant or deny licenses
29 based on the conditions and criteria established in this chapter and
30 the chapters specified in subsection (2) of this section. However, the
31 board of chiropractic examiners has authority over issuance and denial
32 of licenses provided for in chapter 18.25 RCW, the board of dental
33 examiners has authority over issuance and denial of licenses provided
34 for in RCW 18.32.040, and the board of medical examiners has authority
35 over issuance and denial of licenses and registrations provided for in
36 chapters 18.71 and 18.71A RCW. This chapter also governs any
37 investigation, hearing, or proceeding relating to denial of licensure
38 or issuance of a license conditioned on the applicant's compliance with

1 an order entered pursuant to RCW 18.130.160 by the disciplining
2 authority.

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

5 The disciplining authority has the following authority:

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

8 (2) To investigate all complaints or reports of unprofessional
9 conduct as defined in this chapter and to hold hearings as provided in
10 this chapter;

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

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

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

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

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

22 (8) To use the office of administrative hearings as authorized in
23 chapter 34.12 RCW to conduct hearings. However, the disciplining
24 authority shall make the final decision regarding disposition of the
25 license;

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

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

31 (11) To contract with licensees or other persons or organizations
32 to provide services necessary for the monitoring and supervision of
33 licensees who are placed on probation, whose professional activities
34 are restricted, or who are for any authorized purpose subject to
35 monitoring by the disciplining authority;

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

37 (13) To grant or deny license applications, and in the event of a
38 finding of unprofessional conduct by an applicant or license holder, to

1 impose any sanction against a license applicant or license holder
2 provided by this chapter;

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

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

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

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

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

35 Any of the actions under this section may be totally or partly
36 stayed by the disciplining authority. In determining what action is
37 appropriate, the disciplining authority must first consider what
38 sanctions are necessary to protect or compensate the public. Only

1 after such provisions have been made may the disciplining authority
2 consider and include in the order requirements designed to rehabilitate
3 the license holder or applicant. All costs associated with compliance
4 with orders issued under this section are the obligation of the license
5 holder or applicant.

6 The licensee or applicant may enter into a stipulated disposition
7 of charges that includes one or more of the sanctions of this section,
8 but only after a statement of charges has been issued and the licensee
9 has been afforded the opportunity for a hearing and has elected on the
10 record to forego such a hearing. The stipulation shall either contain
11 one or more specific findings of unprofessional conduct or inability to
12 practice, or a statement by the licensee acknowledging that evidence is
13 sufficient to justify one or more specified findings of unprofessional
14 conduct or inability to practice. The stipulation entered into
15 pursuant to this subsection shall be considered formal disciplinary
16 action for all purposes.

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

19 (1) Prior to serving a statement of charges under RCW 18.130.090 or
20 18.130.170, the disciplinary authority may furnish a statement of
21 allegations to the licensee or applicant along with a detailed summary
22 of the evidence relied upon to establish the allegations and a proposed
23 stipulation for informal resolution of the allegations. These
24 documents shall be exempt from public disclosure until such time as the
25 allegations are resolved either by stipulation or otherwise.

26 (2) The disciplinary authority and the applicant or licensee may
27 stipulate that the allegations may be disposed of informally in
28 accordance with this subsection. The stipulation shall contain a
29 statement of the facts leading to the filing of the complaint; the act
30 or acts of unprofessional conduct alleged to have been committed or
31 the alleged basis for determining that the applicant or licensee is
32 unable to practice with reasonable skill and safety; a statement that
33 the stipulation is not to be construed as a finding of either
34 unprofessional conduct or inability to practice; an acknowledgement
35 that a finding of unprofessional conduct or inability to practice, if
36 proven, constitutes grounds for discipline under this chapter; and an
37 agreement on the part of the licensee or applicant that the sanctions
38 set forth in RCW 18.130.160, except RCW 18.130.160 (1), (2), (6), and

1 (8), may be imposed as part of the stipulation, except that no fine may
2 be imposed but the licensee or applicant may agree to reimburse the
3 disciplinary authority the costs of investigation and processing the
4 complaint up to an amount not exceeding one thousand dollars per
5 allegation; and an agreement on the part of the disciplinary authority
6 to forego further disciplinary proceedings concerning the allegations.
7 A stipulation entered into pursuant to this subsection shall not be
8 considered formal disciplinary action.

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

13 (4) Upon execution of a stipulation under subsection (2) of this
14 section by both the licensee or applicant and the disciplinary
15 authority, the complaint is deemed disposed of and shall become subject
16 to public disclosure on the same basis and to the same extent as other
17 records of the disciplinary authority. Should the licensee or
18 applicant fail to pay any agreed reimbursement within thirty days of
19 the date specified in the stipulation for payment, the disciplinary
20 authority may seek collection of the amount agreed to be paid in the
21 same manner as enforcement of a fine under RCW 18.130.165.

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

24 If a person or business regulated by this chapter violates RCW
25 18.130.170 or 18.130.180, the attorney general, any prosecuting
26 attorney, the (~~director~~) secretary, the board, or any other person
27 may maintain an action in the name of the state of Washington to enjoin
28 the person from committing the violations. The injunction shall not
29 relieve the offender from criminal prosecution, but the remedy by
30 injunction shall be in addition to the liability of the offender to
31 criminal prosecution and disciplinary action.

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

34 (1) To implement a substance abuse monitoring program for license
35 holders specified under RCW 18.130.040, who are impaired by substance
36 abuse, the disciplinary authority may enter into a contract with a

1 voluntary substance abuse program under RCW 18.130.175. The program
2 may include any or all of the following:

3 (a) Contracting with providers of treatment programs;

4 (b) Receiving and evaluating reports of suspected impairment from
5 any source;

6 (c) Intervening in cases of verified impairment;

7 (d) Referring impaired license holders to treatment programs;

8 (e) Monitoring the treatment and rehabilitation of impaired license
9 holders including those ordered by the disciplinary authority;

10 (f) Providing education, prevention of impairment, posttreatment
11 monitoring, and support of rehabilitated impaired license holders; and

12 (g) Performing other activities as agreed upon by the disciplinary
13 authority.

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

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

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

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

28 The licensing authority of health care facilities or the
29 (~~(disciplinary board)~~) disciplining authority of the delegating or
30 supervising health care practitioner shall investigate all complaints
31 or allegations of violations of proper certification of a health care
32 assistant or violations of delegation of authority or supervision. A
33 substantiated violation shall constitute sufficient cause for
34 disciplinary action by the licensing authority of a health care
35 facility or the (~~(disciplinary board)~~) disciplining authority of the
36 health care practitioner.

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

3 The uniform disciplinary act, chapter 18.130 RCW, governs
4 uncertified practice, the issuance and denial of certificates, and the
5 discipline of certificate holders under this chapter. The secretary
6 shall be the disciplining authority under this chapter.

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

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

13 (1) His or her license was procured through fraud,
14 misrepresentation, or deceit;

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

17 (3) ~~He or she has committed any act involving moral turpitude,~~
18 ~~dishonesty, or corruption, if the act committed directly relates to the~~
19 ~~pharmacist's fitness to practice pharmacy. Upon such conviction,~~
20 ~~however, the judgment and sentence shall be conclusive evidence at the~~
21 ~~ensuing disciplinary hearing of the guilt of the respondent pharmacist~~
22 ~~of the crime described in the indictment or information, and of his or~~
23 ~~her violation of the statute upon which it is based;~~

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

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

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

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

37 (8)) In the event that a pharmacist is determined by a court of
38 competent jurisdiction to be mentally incompetent, the pharmacist shall

1 automatically have his or her license suspended by the board upon the
2 entry of the judgment, regardless of the pendency of an appeal;

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

8 ~~((+10+))~~ (4) He or she has knowingly allowed any unlicensed person
9 to take charge of a pharmacy or engage in the practice of pharmacy,
10 except a pharmacy intern or pharmacy assistant acting as authorized in
11 this chapter or chapter 18.64A RCW in the presence of and under the
12 immediate supervision of a licensed pharmacist;

13 ~~((+11+))~~ (5) He or she has compounded, dispensed, or caused the
14 compounding or dispensing of any drug or device which contains more or
15 less than the equivalent quantity of ingredient or ingredients
16 specified by the person who prescribed such drug or device: PROVIDED,
17 HOWEVER, That nothing herein shall be construed to prevent the
18 pharmacist from exercising professional judgment in the preparation or
19 providing of such drugs or devices.

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

23 NEW SECTION. **Sec. 14.** A new section is added to chapter 18.64 RCW
24 to read as follows:

25 The uniform disciplinary act, chapter 18.130 RCW, governs
26 unlicensed practice, the issuance and denial of licenses of pharmacists
27 and pharmacy interns, and the discipline of licensed pharmacists and
28 pharmacy interns under this chapter.

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

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

35 (1) His or her certificate was procured through fraud,
36 misrepresentation or deceit;

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

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

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

9 ~~((5))~~ (4) He or she has willfully or repeatedly violated any of
10 the rules and regulations of the board of pharmacy or of the
11 department;

12 ~~((6))~~ (5) He or she has willfully or repeatedly performed duties
13 beyond the scope of his or her certificate in violation of the
14 provisions of this chapter; or

15 ~~((7))~~ (6) He or she has impersonated a licensed pharmacist.

16 ~~((In any case of the refusal, suspension or revocation of a
17 certificate by the board, a hearing shall be conducted in accordance
18 with RCW 18.64.160, as now or hereafter amended, and appeal may be
19 taken in accordance with the Administrative Procedure Act, chapter
20 34.05 RCW.))~~

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

23 The uniform disciplinary act, chapter 18.130 RCW, governs the
24 issuance and denial of certificates and the discipline of certificants
25 under this chapter.

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

28 (1) Every institution or organization providing professional
29 liability insurance to physicians shall send a complete report to the
30 medical disciplinary board of all malpractice settlements, awards, or
31 payments in excess of twenty thousand dollars as a result of a claim or
32 action for damages alleged to have been caused by an insured
33 physician's incompetency or negligence in the practice of medicine.
34 Such institution or organization shall also report the award,
35 settlement, or payment of three or more claims during a ~~((year))~~ five-
36 year time period as the result of the alleged physician's incompetence

1 or negligence in the practice of medicine regardless of the dollar
2 amount of the award or payment.

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

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

9 There is hereby levied to be collected by the department of health
10 from every physician and surgeon licensed pursuant to chapter 18.71 RCW
11 and every physician assistant licensed pursuant to chapter 18.71A RCW
12 an annual medical disciplinary assessment equal to the license renewal
13 fee established under RCW 43.70.250. The assessment levied pursuant to
14 this (~~(subsection)~~) section is in addition to any license renewal fee
15 established under RCW 43.70.250.

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

18 (1) The secretary shall investigate complaints concerning practice
19 by unlicensed persons of a profession or business for which a license
20 is required by the chapters specified in RCW 18.130.040. In the
21 investigation of the complaints, the secretary shall have the same
22 authority as provided the secretary under RCW 18.130.050. (~~The~~
23 ~~secretary shall issue a cease and desist order to a person after notice~~
24 ~~and hearing and upon a determination that the person has violated this~~
25 ~~subsection.))~~

26 (2) The secretary may issue a notice of intention to issue a cease
27 and desist order to any person whom the secretary has reason to believe
28 is engaged in the unlicensed practice of a profession or business for
29 which a license is required by the chapters specified in RCW
30 18.130.040. The person to whom such notice is issued may request an
31 adjudicative proceeding to contest the charges. The request for
32 hearing must be filed within twenty days after service of the notice of
33 intention to issue a cease and desist order. The failure to request a
34 hearing constitutes a default, whereupon the secretary may enter a
35 permanent cease and desist order, which may include a civil fine. All
36 proceedings shall be conducted in accordance with chapter 34.05 RCW.

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

9 (4) If the secretary makes a written finding of fact that the
10 public interest will be irreparably harmed by delay in issuing an
11 order, the secretary may issue a temporary cease and desist order. The
12 person receiving a temporary cease and desist order shall be provided
13 an opportunity for a prompt hearing. The temporary cease and desist
14 order shall remain in effect until further order of the secretary. The
15 failure to request a prompt or regularly scheduled hearing constitutes
16 a default, whereupon the secretary may enter a permanent cease and
17 desist order, which may include a civil fine.

18 (5) Neither the issuance of a cease and desist order nor payment of
19 a civil fine shall ((not)) relieve the person so practicing or
20 operating a business without a license from criminal prosecution
21 therefor, but the remedy of a cease and desist order or civil fine
22 shall be in addition to any criminal liability. The cease and desist
23 order is conclusive proof of unlicensed practice and may be enforced
24 under RCW 7.21.060. This method of enforcement of the cease and desist
25 order or civil fine may be used in addition to, or as an alternative
26 to, any provisions for enforcement of agency orders set out in chapter
27 34.05 RCW.

28 ((+2)) (6) The attorney general, a county prosecuting attorney,
29 the secretary, a board, or any person may in accordance with the laws
30 of this state governing injunctions, maintain an action in the name of
31 this state to enjoin any person practicing a profession or business for
32 which a license is required by the chapters specified in RCW 18.130.040
33 without a license from engaging in such practice or operating such
34 business until the required license is secured. However, the
35 injunction shall not relieve the person so practicing or operating a
36 business without a license from criminal prosecution therefor, but the
37 remedy by injunction shall be in addition to any criminal liability.

38 ((+3)) (7) Unlicensed practice of a profession or operating a
39 business for which a license is required by the chapters specified in

1 RCW 18.130.040, unless otherwise exempted by law, constitutes a gross
2 misdemeanor. All fees, fines, forfeitures, and penalties collected or
3 assessed by a court because of a violation of this section shall be
4 remitted to the health professions account.

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

7 Where an order for payment of a fine is made as a result of a
8 hearing under RCW 18.130.100 or 18.130.190 and timely payment is not
9 made as directed in the final order, the disciplining authority may
10 enforce the order for payment in the superior court in the county in
11 which the hearing was held. This right of enforcement shall be in
12 addition to any other rights the disciplining authority may have as to
13 any licensee ordered to pay a fine but shall not be construed to limit
14 a licensee's ability to seek judicial review under RCW 18.130.140.

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

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

20 The disciplining authority has the following authority:

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

23 (2) To investigate all complaints or reports of unprofessional
24 conduct as defined in this chapter and to hold hearings as provided in
25 this chapter;

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

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

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

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

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

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

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

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

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

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

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

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

27 (15) To designate individuals authorized to sign subpoenas and
28 statements of charges;

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

32 (17) To review and audit the records of licensed health facilities'
33 or services' quality assurance committee decisions in which a
34 licensee's practice privilege or employment is terminated or
35 restricted. Each health facility or service shall produce and make
36 accessible to the disciplining authority the appropriate records and
37 otherwise facilitate the review and audit. Information so gained shall
38 not be subject to discovery or introduction into evidence in any civil
39 action pursuant to RCW 70.41.200(3).

1 **Sec. 22.** RCW 18.130.180 and 1991 c 332 s 34 and 1991 c 215 c 3 are
2 each reenacted and amended to 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. The use of a nontraditional treatment by itself
26 shall not constitute unprofessional conduct, provided that it does not
27 result in injury to a patient or create an unreasonable risk that a
28 patient may be harmed;

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

34 (6) The possession, use, prescription for use, or distribution of
35 controlled substances or legend drugs in any way other than for
36 legitimate or therapeutic purposes, diversion of controlled substances
37 or legend drugs, the violation of any drug law, or prescribing
38 controlled substances for oneself;

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

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

6 (a) Not furnishing any papers or documents;

7 (b) Not furnishing in writing a full and complete explanation
8 covering the matter contained in the complaint filed with the
9 disciplining authority; or

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

13 (9) Failure to comply with an order issued by the ~~((disciplining))~~
14 disciplinary authority or ~~((an assurance of discontinuance))~~ a
15 stipulation for informal disposition entered into with the
16 ~~((disciplining))~~ disciplinary authority;

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

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

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

22 (13) Misrepresentation or fraud in any aspect of the conduct of the
23 business or profession;

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

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

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

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

37 (18) The procuring, or aiding or abetting in procuring, a criminal
38 abortion;

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

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

8 (21) Violation of chapter 19.68 RCW;

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

15 (23) Current misuse of:

16 (a) Alcohol;

17 (b) Controlled substances; or

18 (c) Legend drugs;

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

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

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

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

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

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

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