

CERTIFICATION OF ENROLLMENT
SECOND SUBSTITUTE HOUSE BILL 1618

Chapter 132, Laws of 1998

55th Legislature
1998 Regular Session

IMPAIRED PHYSICIAN PROGRAM--REVISIONS

EFFECTIVE DATE: 6/11/98

Passed by the House March 7, 1998
Yeas 96 Nays 0

CLYDE BALLARD
**Speaker of the
House of Representatives**

Passed by the Senate March 4, 1998
Yeas 43 Nays 0

BRAD OWEN
President of the Senate

Approved March 25, 1998

GARY LOCKE
Governor of the State of Washington

CERTIFICATE

I, Timothy A. Martin, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SECOND SUBSTITUTE HOUSE BILL 1618** as passed by the House of Representatives and the Senate on the dates hereon set forth.

TIMOTHY A. MARTIN
Chief Clerk

FILED

March 25, 1998 - 4:18 p.m.

**Secretary of State
State of Washington**

SECOND SUBSTITUTE HOUSE BILL 1618

Passed Legislature - 1998 Regular Session

AS AMENDED BY THE SENATE

Passed Legislature - 1998 Regular Session

State of Washington 55th Legislature 1998 Regular Session

By House Committee on Health Care (originally sponsored by Representatives Skinner, Dyer, Conway, Zellinsky, Cody, Backlund, Parlette and Clements)

Read first time 01/22/98. Referred to Committee on .

1 AN ACT Relating to treatment programs for impaired physicians;
2 amending RCW 18.71.0195, 18.71.300, 18.71.310, 18.71.320, 18.71.330,
3 18.71.340, 18.130.070, 18.130.080, 18.130.175, 18.130.300, 18.57A.020,
4 and 18.71A.020; adding a new section to chapter 18.71 RCW; and creating
5 a new section.

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

7 NEW SECTION. **Sec. 1.** The legislature finds that the self-imposed
8 license surcharge on physician licenses to fund a program to help
9 physicians with chemical dependency or mental illness is not being
10 fully spent on that program. It is the intent of the legislature that
11 the program be fully funded and that funds collected into the impaired
12 physician account be spent only on the program.

13 **Sec. 2.** RCW 18.71.0195 and 1994 sp.s. c 9 s 328 are each amended
14 to read as follows:

15 (1) The contents of any report ((file)) filed under RCW 18.130.070
16 shall be confidential and exempt from public disclosure pursuant to
17 chapter 42.17 RCW, except that it may be reviewed (a) by the licensee
18 involved or his or her counsel or authorized representative who may

1 submit any additional exculpatory or explanatory statements or other
2 information, which statements or other information shall be included in
3 the file, or (b) by a representative of the commission, or investigator
4 thereof, who has been assigned to review the activities of a licensed
5 physician.

6 Upon a determination that a report is without merit, the
7 commission's records may be purged of information relating to the
8 report.

9 (2) Every individual, medical association, medical society,
10 hospital, medical service bureau, health insurance carrier or agent,
11 professional liability insurance carrier, professional standards review
12 organization, ~~((and))~~ agency of the federal, state, or local government
13 ~~((shall be))~~, or the entity established by RCW 18.71.300 and its
14 officers, agents, and employees are immune from civil liability,
15 whether direct or derivative, for providing information to the
16 commission under RCW 18.130.070, or for which an individual health care
17 provider has immunity under the provisions of RCW 4.24.240, 4.24.250,
18 or 4.24.260.

19 **Sec. 3.** RCW 18.71.300 and 1994 sp.s. c 9 s 329 are each amended to
20 read as follows:

21 ~~((Unless the context clearly requires otherwise,))~~ The definitions
22 in this section apply throughout RCW 18.71.310 through 18.71.340 unless
23 the context clearly requires otherwise.

24 (1) ~~(("Committee"))~~ "Entity" means a nonprofit corporation formed
25 by physicians who have expertise in the areas of ~~((alcoholism))~~ alcohol
26 abuse, drug abuse, ((or)) alcoholism, other drug addictions, and mental
27 illness and who broadly represent the physicians of the state and that
28 has been designated to perform any or all of the activities set forth
29 in RCW 18.71.310(1) ((pursuant to rules adopted)) by the commission
30 ((under chapter 34.05 RCW)).

31 (2) "Impaired" or "impairment" means the ~~((presence of the diseases~~
32 ~~of alcoholism, drug abuse, mental illness))~~ inability to practice
33 medicine with reasonable skill and safety to patients by reason of
34 physical or mental illness including alcohol abuse, drug abuse,
35 alcoholism, other drug addictions, or other debilitating conditions.

36 (3) "Impaired physician program" means the program for the
37 prevention, detection, intervention, ~~((and))~~ monitoring, and treatment

1 of impaired physicians established by the commission pursuant to RCW
2 18.71.310(1).

3 (4) "Physician" or "practitioner" means a person licensed under
4 this chapter, chapter 18.71A RCW, or a professional licensed under
5 another chapter of Title 18 RCW whose disciplining authority has a
6 contract with the entity for an impaired practitioner program for its
7 license holders.

8 (5) "Treatment program" means a plan of care and rehabilitation
9 services provided by those organizations or persons authorized to
10 provide such services to be approved by the commission or entity for
11 impaired physicians taking part in the impaired physician program
12 created by RCW 18.71.310.

13 **Sec. 4.** RCW 18.71.310 and 1997 c 79 s 2 are each amended to read
14 as follows:

15 (1) The commission shall enter into a contract with the
16 ~~((committee))~~ entity to implement an impaired physician program. The
17 commission may enter into a contract with the entity for up to six
18 years in length. The impaired physician program may include any or all
19 of the following:

20 (a) ~~((Contracting))~~ Entering into relationships supportive of the
21 impaired physician program with ~~((providers of))~~ professionals who
22 provide either evaluation or treatment ~~((programs))~~ services, or both;

23 (b) Receiving and ~~((evaluating))~~ assessing reports of suspected
24 impairment from any source;

25 (c) Intervening in cases of verified impairment, or in cases where
26 there is reasonable cause to suspect impairment;

27 (d) Upon reasonable cause, referring suspected or verified impaired
28 physicians ~~((to))~~ for evaluation or treatment ~~((programs))~~;

29 (e) Monitoring the treatment and rehabilitation of impaired
30 physicians including those ordered by the commission;

31 (f) Providing ~~((post-treatment))~~ monitoring and continuing
32 treatment and rehabilitative support of ~~((rehabilitative impaired))~~
33 physicians;

34 (g) Performing such other activities as agreed upon by the
35 commission and the ~~((committee))~~ entity; and

36 (h) Providing prevention and education services.

37 (2) A contract entered into under subsection (1) of this section
38 shall be financed by a surcharge of ~~((up to))~~ twenty-five dollars per

1 year on each license renewal or issuance of a new license to be
2 collected by the department of health from every physician and surgeon
3 licensed under this chapter in addition to other license fees. These
4 moneys shall be placed in the ~~((health professions))~~ impaired physician
5 account to be used solely for the implementation of the impaired
6 physician program.

7 **Sec. 5.** RCW 18.71.320 and 1994 sp.s. c 9 s 331 are each amended to
8 read as follows:

9 The ~~((committee))~~ entity shall develop procedures in consultation
10 with the commission for:

11 (1) Periodic reporting of statistical information regarding
12 impaired physician activity;

13 (2) Periodic disclosure and joint review of such information as the
14 commission may deem appropriate regarding reports received, contacts or
15 investigations made, and the disposition of each report~~((:—PROVIDED,~~
16 ~~That))~~. However, the ~~((committee))~~ entity shall not disclose any
17 personally identifiable information except as provided in subsections
18 (3) and (4) of this section;

19 (3) Immediate reporting to the commission of the name and results
20 of any contact or investigation regarding any suspected or verified
21 impaired physician who is reasonably believed probably to constitute an
22 imminent danger to himself or herself or to the public;

23 (4) Reporting to the commission, in a timely fashion, any suspected
24 or verified impaired physician who ~~((refuses))~~ fails to cooperate with
25 the ~~((committee, refuses))~~ entity, fails to submit to evaluation or
26 treatment, or whose impairment is not substantially alleviated through
27 treatment, ~~((and))~~ or who, in the opinion of the ~~((committee))~~ entity,
28 is probably unable to practice medicine with reasonable skill and
29 safety~~((— However, impairment, in and of itself, shall not give rise~~
30 ~~to a presumption of the inability to practice medicine with reasonable~~
31 ~~skill and safety))~~;

32 (5) Informing each participant of the impaired physician program of
33 the program procedures, the responsibilities of program participants,
34 and the possible consequences of noncompliance with the program.

35 **Sec. 6.** RCW 18.71.330 and 1994 sp.s. c 9 s 332 are each amended to
36 read as follows:

1 If the commission has reasonable cause to believe that a physician
2 is impaired, the commission shall cause an evaluation of such physician
3 to be conducted by the ((committee)) entity or the ((committee's))
4 entity's designee or the commission's designee for the purpose of
5 determining if there is an impairment. The ((committee)) entity or
6 appropriate designee shall report the findings of its evaluation to the
7 commission.

8 **Sec. 7.** RCW 18.71.340 and 1987 c 416 s 6 are each amended to read
9 as follows:

10 All ((committee)) entity records are not subject to disclosure
11 pursuant to chapter 42.17 RCW.

12 **Sec. 8.** RCW 18.130.070 and 1989 c 373 s 19 are each amended to
13 read as follows:

14 (1) The disciplining authority may adopt rules requiring any
15 person, including, but not limited to, licensees, corporations,
16 organizations, health care facilities, impaired practitioner programs,
17 or voluntary substance abuse monitoring programs approved by the
18 disciplining authority and state or local governmental agencies, to
19 report to the disciplining authority any conviction, determination, or
20 finding that a license holder has committed an act which constitutes
21 unprofessional conduct, or to report information to the disciplining
22 authority, an impaired practitioner program, or voluntary substance
23 abuse monitoring program approved by the disciplining authority, which
24 indicates that the license holder may not be able to practice his or
25 her profession with reasonable skill and safety to consumers as a
26 result of a mental or physical condition. To facilitate meeting the
27 intent of this section, the cooperation of agencies of the federal
28 government is requested by reporting any conviction, determination, or
29 finding that a federal employee or contractor regulated by the
30 disciplinary authorities enumerated in this chapter has committed an
31 act which constituted unprofessional conduct and reporting any
32 information which indicates that a federal employee or contractor
33 regulated by the disciplinary authorities enumerated in this chapter
34 may not be able to practice his or her profession with reasonable skill
35 and safety as a result of a mental or physical condition.

36 (2) If a person fails to furnish a required report, the
37 disciplining authority may petition the superior court of the county in

1 which the person resides or is found, and the court shall issue to the
2 person an order to furnish the required report. A failure to obey the
3 order is a contempt of court as provided in chapter 7.21 RCW.

4 (3) A person is immune from civil liability, whether direct or
5 derivative, for providing information to the disciplining authority
6 pursuant to the rules adopted under subsection (1) of this section.

7 (4) The holder of a license subject to the jurisdiction of this
8 chapter shall report to the disciplining authority any conviction,
9 determination, or finding that the licensee has committed
10 unprofessional conduct or is unable to practice with reasonable skill
11 or safety. Failure to report within thirty days of notice of the
12 conviction, determination, or finding constitutes grounds for
13 disciplinary action.

14 **Sec. 9.** RCW 18.130.080 and 1986 c 259 s 5 are each amended to read
15 as follows:

16 A person, including but not limited to consumers, licensees,
17 corporations, organizations, health care facilities, impaired
18 practitioner programs, or voluntary substance abuse monitoring programs
19 approved by disciplining authorities, and state and local governmental
20 agencies, may submit a written complaint to the disciplining authority
21 charging a license holder or applicant with unprofessional conduct and
22 specifying the grounds therefor or to report information to the
23 disciplining authority, or voluntary substance abuse monitoring
24 program, or an impaired practitioner program approved by the
25 disciplining authority, which indicates that the license holder may not
26 be able to practice his or her profession with reasonable skill and
27 safety to consumers as a result of a mental or physical condition. If
28 the disciplining authority determines that the complaint merits
29 investigation, or if the disciplining authority has reason to believe,
30 without a formal complaint, that a license holder or applicant may have
31 engaged in unprofessional conduct, the disciplining authority shall
32 investigate to determine whether there has been unprofessional conduct.
33 A person who files a complaint or reports information under this
34 section in good faith is immune from suit in any civil action related
35 to the filing or contents of the complaint.

36 **Sec. 10.** RCW 18.130.175 and 1993 c 367 s 3 are each amended to
37 read 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 other drug addiction treatment shall be provided by
10 approved treatment programs under RCW 70.96A.020(~~(:—PROVIDED, That)~~)
11 or by any other provider approved by the entity or the commission.
12 However, nothing shall prohibit the disciplining authority from
13 approving additional services and programs as an adjunct to primary
14 alcoholism or other drug addiction treatment. The disciplining
15 authority may also approve the use of out-of-state programs. Referral
16 of the license holder to the program shall be done only with the
17 consent of the license holder. Referral to the program may also
18 include probationary conditions for a designated period of time. If
19 the license holder does not consent to be referred to the program or
20 does not successfully complete the program, the disciplining authority
21 may take appropriate action under RCW 18.130.160. The secretary shall
22 adopt uniform rules for the evaluation by the disciplinary authority of
23 a relapse or program violation on the part of a license holder in the
24 substance abuse monitoring program. The evaluation shall encourage
25 program participation with additional conditions, in lieu of
26 disciplinary action, when the disciplinary authority determines that
27 the license holder is able to continue to practice with reasonable
28 skill and safety.

29 (2) In addition to approving substance abuse monitoring programs
30 that may receive referrals from the disciplining authority, the
31 disciplining authority may establish by rule requirements for
32 participation of license holders who are not being investigated or
33 monitored by the disciplining authority for substance abuse. License
34 holders voluntarily participating in the approved programs without
35 being referred by the disciplining authority shall not be subject to
36 disciplinary action under RCW 18.130.160 for their substance abuse, and
37 shall not have their participation made known to the disciplining
38 authority, if they meet the requirements of this section and the
39 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 possibly impaired
5 or 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 courts are strongly encouraged to impose sanctions on
9 clients and their attorneys whose allegations under this subsection are
10 not made in good faith and are without either reasonable objective,
11 substantive grounds, or both.

12 (c) The immunity provided in this section is in addition to any
13 other immunity provided by law.

14 **Sec. 11.** RCW 18.130.300 and 1994 sp.s. c 9 s 605 are each amended
15 to read as follows:

16 (1) The secretary, members of the boards or commissions, or
17 individuals acting on their behalf are immune from suit in any action,
18 civil or criminal, based on any disciplinary proceedings or other
19 official acts performed in the course of their duties.

20 (2) A voluntary substance abuse monitoring program or an impaired
21 practitioner program approved by a disciplining authority, or
22 individuals acting on their behalf, are immune from suit in a civil
23 action based on any disciplinary proceedings or other official acts
24 performed in the course of their duties.

25 NEW SECTION. **Sec. 12.** A new section is added to chapter 18.71 RCW
26 to read as follows:

27 The impaired physician account is created in the custody of the
28 state treasurer. All receipts from RCW 18.71.310 from license
29 surcharges on physicians and physician assistants shall be deposited
30 into the account. Expenditures from the account may only be used for
31 the impaired physician program under this chapter. Only the secretary
32 of health or the secretary's designee may authorize expenditures from
33 the account. No appropriation is required for expenditures from this
34 account.

35 **Sec. 13.** RCW 18.57A.020 and 1996 c 191 s 39 are each amended to
36 read as follows:

1 (1) The board shall adopt rules fixing the qualifications and the
2 educational and training requirements for licensure as an osteopathic
3 physician assistant or for those enrolled in any physician assistant
4 training program. The requirements shall include completion of an
5 accredited physician assistant training program approved by the board
6 and eligibility to take an examination approved by the board, providing
7 such examination tests subjects substantially equivalent to the
8 curriculum of an accredited physician assistant training program.

9 (2)(a) The board shall adopt rules governing the extent to which:

10 (i) Physician assistant students may practice medicine during
11 training; and

12 (ii) Physician assistants may practice after successful completion
13 of a training course.

14 (b) Such rules shall provide:

15 (i) That the practice of an osteopathic physician assistant shall
16 be limited to the performance of those services for which he or she is
17 trained; and

18 (ii) That each osteopathic physician assistant shall practice
19 osteopathic medicine only under the supervision and control of an
20 osteopathic physician licensed in this state, but such supervision and
21 control shall not be construed to necessarily require the personal
22 presence of the supervising physicians at the place where services are
23 rendered. The board may authorize the use of alternative supervisors
24 who are licensed either under chapter 18.57 or 18.71 RCW.

25 (3) Applicants for licensure shall file an application with the
26 board on a form prepared by the secretary with the approval of the
27 board, detailing the education, training, and experience of the
28 physician assistant and such other information as the board may
29 require. The application shall be accompanied by a fee determined by
30 the secretary as provided in RCW 43.70.250 and 43.70.280. A surcharge
31 of twenty-five dollars per year may be charged on each license renewal
32 or issuance of a new license to be collected by the department of
33 health for physician assistant participation in an impaired
34 practitioner program. Each applicant shall furnish proof satisfactory
35 to the board of the following:

36 (a) That the applicant has completed an accredited physician
37 assistant program approved by the board and is eligible to take the
38 examination approved by the board;

39 (b) That the applicant is of good moral character; and

1 (c) That the applicant is physically and mentally capable of
2 practicing osteopathic medicine as an osteopathic physician assistant
3 with reasonable skill and safety. The board may require any applicant
4 to submit to such examination or examinations as it deems necessary to
5 determine an applicant's physical and/or mental capability to safely
6 practice as an osteopathic physician assistant.

7 (4) The board may approve, deny, or take other disciplinary action
8 upon the application for a license as provided in the uniform
9 disciplinary act, chapter 18.130 RCW. The license shall be renewed as
10 determined under RCW 43.70.250 and 43.70.280.

11 **Sec. 14.** RCW 18.71A.020 and 1996 c 191 s 57 are each amended to
12 read as follows:

13 (1) The commission shall adopt rules fixing the qualifications and
14 the educational and training requirements for licensure as a physician
15 assistant or for those enrolled in any physician assistant training
16 program. The requirements shall include completion of an accredited
17 physician assistant training program approved by the commission and
18 eligibility to take an examination approved by the commission, if the
19 examination tests subjects substantially equivalent to the curriculum
20 of an accredited physician assistant training program. Physician
21 assistants licensed by the board of medical examiners as of June 7,
22 1990, shall continue to be licensed.

23 (2)(a) The commission shall adopt rules governing the extent to
24 which:

25 (i) Physician assistant students may practice medicine during
26 training; and

27 (ii) Physician assistants may practice after successful completion
28 of a physician assistant training course.

29 (b) Such rules shall provide:

30 (i) That the practice of a physician assistant shall be limited to
31 the performance of those services for which he or she is trained; and

32 (ii) That each physician assistant shall practice medicine only
33 under the supervision and control of a physician licensed in this
34 state, but such supervision and control shall not be construed to
35 necessarily require the personal presence of the supervising physician
36 or physicians at the place where services are rendered.

37 (3) Applicants for licensure shall file an application with the
38 commission on a form prepared by the secretary with the approval of the

1 commission, detailing the education, training, and experience of the
2 physician assistant and such other information as the commission may
3 require. The application shall be accompanied by a fee determined by
4 the secretary as provided in RCW 43.70.250 and 43.70.280. A surcharge
5 of twenty-five dollars per year shall be charged on each license
6 renewal or issuance of a new license to be collected by the department
7 and deposited into the impaired physician account for physician
8 assistant participation in the impaired physician program. Each
9 applicant shall furnish proof satisfactory to the commission of the
10 following:

11 (a) That the applicant has completed an accredited physician
12 assistant program approved by the commission and is eligible to take
13 the examination approved by the commission;

14 (b) That the applicant is of good moral character; and

15 (c) That the applicant is physically and mentally capable of
16 practicing medicine as a physician assistant with reasonable skill and
17 safety. The commission may require an applicant to submit to such
18 examination or examinations as it deems necessary to determine an
19 applicant's physical or mental capability, or both, to safely practice
20 as a physician assistant.

21 (4) The commission may approve, deny, or take other disciplinary
22 action upon the application for license as provided in the Uniform
23 Disciplinary Act, chapter 18.130 RCW. The license shall be renewed as
24 determined under RCW 43.70.250 and 43.70.280. The commission may
25 authorize the use of alternative supervisors who are licensed either
26 under chapter 18.57 or 18.71 RCW.

27 NEW SECTION. **Sec. 15.** If any provision of this act or its
28 application to any person or circumstance is held invalid, the
29 remainder of the act or the application of the provision to other
30 persons or circumstances is not affected.

Passed the House March 7, 1998.

Passed the Senate March 4, 1998.

Approved by the Governor March 25, 1998.

Filed in Office of Secretary of State March 25, 1998.