
SUBSTITUTE HOUSE BILL 2326

State of Washington 58th Legislature 2004 Regular Session

By House Committee on Health Care (originally sponsored by Representatives Campbell, Cody, O'Brien, Kenney, Moeller and Edwards)

READ FIRST TIME 02/04/04.

1 AN ACT Relating to the uniform disciplinary act for health
2 professions; amending RCW 18.130.050, 18.130.060, 18.130.080,
3 18.130.090, 18.130.160, 18.130.170, and 18.130.172; adding a new
4 section to chapter 18.130 RCW; creating a new section; and prescribing
5 penalties.

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

7 NEW SECTION. **Sec. 1.** The uniform disciplinary act provides a
8 uniform process for addressing acts of unprofessional conduct affecting
9 fifty-seven health professions regulated by the state. The
10 disciplinary authorities include the secretary of health and sixteen
11 boards and commissions charged with protecting the health and safety of
12 patients from unprofessional conduct. It is recognized nationally as
13 a model law and has worked well over time to provide uniformity and
14 efficiency to the disciplinary process.

15 The legislature finds that it is necessary to further streamline
16 the disciplinary process and ensure more equitable case dispositions
17 among health care providers. An efficient division of responsibilities
18 between the secretary of health with authority over preliminary
19 complaint investigations and charging decisions reserves to the health

1 professionals sitting on the boards and commissions the final authority
2 on case dispositions. These measures will ensure that investigations
3 and charging decisions are free of any potential conflicts of interest
4 and that sanctions are uniform across professional lines.

5 The legislature further finds that this act does not intend to
6 change or modify, in any way, the relationship as it exists on the
7 effective date of this section between boards and commissions and
8 contractors providing services to impaired providers.

9 **Sec. 2.** RCW 18.130.050 and 1995 c 336 s 4 are each amended to read
10 as follows:

11 The disciplining authority has the following authority:

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

14 (2) To ~~((investigate))~~ provide consultation and assistance with
15 investigations of all complaints or reports of unprofessional conduct
16 as defined in this chapter ((and)) as requested by the secretary.
17 However, the secretary must consult with the disciplining authority in
18 those matters:

19 (a) Pertaining to standards of practice; and

20 (b) Where clinical expertise is necessary;

21 (3) To hold hearings as provided in this chapter;

22 ~~((+3))~~ (4) To issue subpoenas and administer oaths in connection
23 with any investigation, hearing, or proceeding held under this chapter;

24 ~~((+4))~~ (5) To take or cause depositions to be taken and use other
25 discovery procedures as needed in any investigation, hearing, or
26 proceeding held under this chapter;

27 ~~((+5))~~ (6) To compel attendance of witnesses at hearings;

28 ~~((+6))~~ (7) In the course of ((investigating)) consulting and
29 assisting with the investigation of a complaint or report of
30 unprofessional conduct, to conduct practice reviews as requested by the
31 secretary;

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

35 (8) To use a presiding officer as authorized in RCW 18.130.095(3)
36 or the office of administrative hearings as authorized in chapter 34.12
37 RCW to conduct hearings. The disciplining authority shall make the

1 final decision regarding disposition of the license unless the
2 disciplining authority elects to delegate in writing the final decision
3 to the presiding officer;

4 (9) To use individual members of the boards to (~~direct~~) provide
5 consultation and assistance with investigations as requested by the
6 secretary. However, the member of the board shall not subsequently
7 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 designate individuals authorized to sign subpoenas and
21 statements of charges;

22 (15) To establish panels consisting of three or more members of the
23 board to perform any duty or authority within the board's jurisdiction
24 under this chapter;

25 (16) To review and audit the records of licensed health facilities'
26 or services' quality assurance committee decisions in which a
27 licensee's practice privilege or employment is terminated or
28 restricted. Each health facility or service shall produce and make
29 accessible to the disciplining authority the appropriate records and
30 otherwise facilitate the review and audit. Information so gained shall
31 not be subject to discovery or introduction into evidence in any civil
32 action pursuant to RCW 70.41.200(3).

33 **Sec. 3.** RCW 18.130.060 and 2001 c 101 s 1 are each amended to read
34 as follows:

35 In addition to the authority specified in RCW 18.130.050, the
36 secretary has the following additional authority:

1 (1) To employ such investigative, administrative, and clerical
2 staff as necessary for the enforcement of this chapter;

3 (2) Upon the request of a board, to appoint pro tem members to
4 participate as members of a panel of the board in connection with
5 proceedings specifically identified in the request. Individuals so
6 appointed must meet the same minimum qualifications as regular members
7 of the board. Pro tem members appointed for matters under this chapter
8 are appointed for a term of no more than one year. No pro tem member
9 may serve more than four one-year terms. While serving as board
10 members pro tem, persons so appointed have all the powers, duties, and
11 immunities, and are entitled to the emoluments, including travel
12 expenses in accordance with RCW 43.03.050 and 43.03.060, of regular
13 members of the board. The chairperson of a panel shall be a regular
14 member of the board appointed by the board chairperson. Panels have
15 authority to act as directed by the board with respect to all matters
16 (~~concerning the review, investigation, and adjudication of all~~
17 ~~complaints, allegations, charges, and matters~~) subject to the
18 jurisdiction of the board or commission. The authority to act through
19 panels does not restrict the authority of the board to act as a single
20 body at any phase of proceedings within the board's jurisdiction.
21 Board panels may (~~make interim orders and~~) issue final orders and
22 decisions with respect to matters and cases delegated to the panel by
23 the board. Final decisions may be appealed as provided in chapter
24 34.05 RCW, the Administrative Procedure Act;

25 (3) To establish fees to be paid for witnesses, expert witnesses,
26 and consultants used in any investigation and to establish fees to
27 witnesses in any agency adjudicative proceeding as authorized by RCW
28 34.05.446;

29 (4) To conduct investigations and practice reviews (~~at the~~
30 ~~direction of the disciplining authority~~) and to issue subpoenas,
31 administer oaths, and take depositions in the course of conducting
32 those investigations and practice reviews at the direction of the
33 disciplining authority. The secretary must consult with the relevant
34 disciplining authority in an investigation relating to the breach of a
35 standard of practice or in a matter where clinical expertise is
36 necessary;

37 (5) To review results of investigations conducted under this

1 chapter and determine the appropriate disposition, which may include
2 closure, notice of correction, stipulations permitted by RCW
3 18.130.172, or issuance of a statement of charges;

4 (6) To take emergency action ordering summary suspension of a
5 license, or restriction or limitation of the licensee's practice
6 pending proceedings by the disciplining authority;

7 (7) To have the health professions regulatory program establish a
8 system to recruit potential public members, to review the
9 qualifications of such potential members, and to provide orientation to
10 those public members appointed pursuant to law by the governor or the
11 secretary to the boards and commissions specified in RCW
12 18.130.040(2)(b), and to the advisory committees and ((councils)) for
13 professions specified in RCW 18.130.040(2)(a).

14 **Sec. 4.** RCW 18.130.080 and 1998 c 132 s 9 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
21 authority)) secretary charging a license holder or applicant with
22 unprofessional conduct and specifying the grounds therefor or to report
23 information to the ((disciplining authority)) secretary, or voluntary
24 substance abuse monitoring program, or an impaired practitioner program
25 approved by the ((disciplining authority)) secretary, which indicates
26 that the license holder may not be able to practice his or her
27 profession with reasonable skill and safety to consumers as a result of
28 a mental or physical condition. If the ((disciplining authority))
29 secretary determines that the complaint merits investigation, or if the
30 ((disciplining authority)) secretary has reason to believe, without a
31 formal complaint, that a license holder or applicant may have engaged
32 in unprofessional conduct, the ((disciplining authority)) secretary
33 shall investigate to determine whether there has been unprofessional
34 conduct. A person who files a complaint or reports information under
35 this section in good faith is immune from suit in any civil action
36 related to the filing or contents of the complaint.

1 **Sec. 5.** RCW 18.130.090 and 1993 c 367 s 1 are each amended to read
2 as follows:

3 (1) If the (~~(disciplining authority)~~) secretary determines, upon
4 investigation, that there is reason to believe a violation of RCW
5 18.130.180 has occurred, a statement of charge or charges shall be
6 prepared and served upon the license holder or applicant at the
7 earliest practical time. The statement of charge or charges shall be
8 accompanied by a notice that the license holder or applicant may
9 request a hearing to contest the charge or charges. The license holder
10 or applicant must file a request for hearing with the disciplining
11 authority within twenty days after being served the statement of
12 charges. If the twenty-day limit results in a hardship upon the
13 license holder or applicant, he or she may request for good cause an
14 extension not to exceed sixty additional days. If the disciplining
15 authority finds that there is good cause, it shall grant the extension.
16 The failure to request a hearing constitutes a default, whereupon the
17 disciplining authority may enter a decision on the basis of the facts
18 available to it.

19 (2) If a hearing is requested, the time of the hearing shall be
20 fixed by the disciplining authority as soon as convenient, but the
21 hearing shall not be held earlier than thirty days after service of the
22 charges upon the license holder or applicant.

23 **Sec. 6.** RCW 18.130.160 and 2001 c 195 s 1 are each amended to read
24 as follows:

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

- 30 (1) Revocation of the license;
- 31 (2) Suspension of the license for a fixed or indefinite term;
- 32 (3) Restriction or limitation of the practice;
- 33 (4) Requiring the satisfactory completion of a specific program of
34 remedial education or treatment;
- 35 (5) The monitoring of the practice by a supervisor approved by the
36 disciplining authority;
- 37 (6) Censure or reprimand;

1 (7) Compliance with conditions of probation for a designated period
2 of time;

3 (8) Payment of a fine for each violation of this chapter, not to
4 exceed five thousand dollars per violation. Funds received shall be
5 placed in the health professions account;

6 (9) Denial of the license request;

7 (10) Corrective action;

8 (11) Refund of fees billed to and collected from the consumer;

9 (12) A surrender of the practitioner's license in lieu of other
10 sanctions, which must be reported to the federal data bank.

11 Except as otherwise provided in section 9 of this act, any of the
12 actions under this section may be totally or partly stayed by the
13 disciplining authority. In determining what action is appropriate, the
14 disciplining authority must first consider what sanctions are necessary
15 to protect or compensate the public. Only after such provisions have
16 been made may the disciplining authority consider and include in the
17 order requirements designed to rehabilitate the license holder or
18 applicant. All costs associated with compliance with orders issued
19 under this section are the obligation of the license holder or
20 applicant.

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

32 **Sec. 7.** RCW 18.130.170 and 1995 c 336 s 8 are each amended to read
33 as follows:

34 (1) If the ((disciplining authority)) secretary believes a license
35 holder or applicant may be unable to practice with reasonable skill and
36 safety to consumers by reason of any mental or physical condition, a
37 statement of charges in the name of the ((disciplining authority))

1 secretary shall be served on the license holder or applicant and notice
2 shall also be issued providing an opportunity for a hearing. The
3 hearing shall be limited to the sole issue of the capacity of the
4 license holder or applicant to practice with reasonable skill and
5 safety. If the disciplining authority determines that the license
6 holder or applicant is unable to practice with reasonable skill and
7 safety for one of the reasons stated in this subsection, the
8 disciplining authority shall impose such sanctions under RCW 18.130.160
9 as is deemed necessary to protect the public.

10 (2)(a) In investigating or adjudicating a complaint or report that
11 a license holder or applicant may be unable to practice with reasonable
12 skill or safety by reason of any mental or physical condition, the
13 (~~disciplining authority~~) secretary may require a license holder or
14 applicant to submit to a mental or physical examination by one or more
15 licensed or certified health professionals designated by the
16 (~~disciplining authority~~) secretary. The license holder or applicant
17 shall be provided written notice of the (~~disciplining authority's~~)
18 secretary's intent to order a mental or physical examination, which
19 notice shall include: (i) A statement of the specific conduct, event,
20 or circumstances justifying an examination; (ii) a summary of the
21 evidence supporting the (~~disciplining authority's~~) secretary's
22 concern that the license holder or applicant may be unable to practice
23 with reasonable skill and safety by reason of a mental or physical
24 condition, and the grounds for believing such evidence to be credible
25 and reliable; (iii) a statement of the nature, purpose, scope, and
26 content of the intended examination; (iv) a statement that the license
27 holder or applicant has the right to respond in writing within twenty
28 days to challenge the (~~disciplining authority's~~) secretary's grounds
29 for ordering an examination or to challenge the manner or form of the
30 examination; and (v) a statement that if the license holder or
31 applicant timely responds to the notice of intent, then the license
32 holder or applicant will not be required to submit to the examination
33 while the response is under consideration.

34 (b) Upon submission of a timely response to the notice of intent to
35 order a mental or physical examination, the license holder or applicant
36 shall have an opportunity to respond to or refute such an order by
37 submission of evidence or written argument or both. The evidence and
38 written argument supporting and opposing the mental or physical

1 examination shall be reviewed by either a panel of the disciplining
2 authority members who have not been involved with the allegations
3 against the license holder or applicant or a neutral decision maker
4 approved by the disciplining authority. The reviewing panel of the
5 disciplining authority or the approved neutral decision maker may, in
6 its discretion, ask for oral argument from the parties. The reviewing
7 panel of the disciplining authority or the approved neutral decision
8 maker shall prepare a written decision as to whether: There is
9 reasonable cause to believe that the license holder or applicant may be
10 unable to practice with reasonable skill and safety by reason of a
11 mental or physical condition, or the manner or form of the mental or
12 physical examination is appropriate, or both.

13 (c) Upon receipt by the (~~(disciplining authority)~~) secretary of the
14 written decision, or upon the failure of the license holder or
15 applicant to timely respond to the notice of intent, the (~~(disciplining~~
16 ~~authority)~~) secretary may issue an order requiring the license holder
17 or applicant to undergo a mental or physical examination. All such
18 mental or physical examinations shall be narrowly tailored to address
19 only the alleged mental or physical condition and the ability of the
20 license holder or applicant to practice with reasonable skill and
21 safety. An order of the (~~(disciplining authority)~~) secretary requiring
22 the license holder or applicant to undergo a mental or physical
23 examination is not a final order for purposes of appeal. The cost of
24 the examinations ordered by the (~~(disciplining authority)~~) secretary
25 shall be paid out of the health professions account. In addition to
26 any examinations ordered by the (~~(disciplining authority)~~) secretary,
27 the licensee may submit physical or mental examination reports from
28 licensed or certified health professionals of the license holder's or
29 applicant's choosing and expense.

30 (d) If the disciplining authority finds that a license holder or
31 applicant has failed to submit to a properly ordered mental or physical
32 examination, then the disciplining authority may order appropriate
33 action or discipline under RCW 18.130.180(9), unless the failure was
34 due to circumstances beyond the person's control. However, no such
35 action or discipline may be imposed unless the license holder or
36 applicant has had the notice and opportunity to challenge the
37 (~~(disciplining authority's)~~) secretary's grounds for ordering the
38 examination, to challenge the manner and form, to assert any other

1 defenses, and to have such challenges or defenses considered by either
2 a panel of the disciplining authority members who have not been
3 involved with the allegations against the license holder or applicant
4 or a neutral decision maker approved by the disciplining authority, as
5 previously set forth in this section. Further, the action or
6 discipline ordered by the disciplining authority shall not be more
7 severe than a suspension of the license, certification, registration or
8 application until such time as the license holder or applicant complies
9 with the properly ordered mental or physical examination.

10 (e) Nothing in this section shall restrict the power of ((a
11 ~~disciplining authority~~)) the secretary to act in an emergency under RCW
12 34.05.422(4), 34.05.479, and ((~~18.130.050(7)~~)) 18.130.060(6).

13 (f) A determination by a court of competent jurisdiction that a
14 license holder or applicant is mentally incompetent or mentally ill is
15 presumptive evidence of the license holder's or applicant's inability
16 to practice with reasonable skill and safety. An individual affected
17 under this section shall at reasonable intervals be afforded an
18 opportunity, at his or her expense, to demonstrate that the individual
19 can resume competent practice with reasonable skill and safety to the
20 consumer.

21 (3) For the purpose of subsection (2) of this section, an applicant
22 or license holder governed by this chapter, by making application,
23 practicing, or filing a license renewal, is deemed to have given
24 consent to submit to a mental, physical, or psychological examination
25 when directed in writing by the ((~~disciplining authority~~)) secretary
26 and further to have waived all objections to the admissibility or use
27 of the examining health professional's testimony or examination reports
28 by the ((~~disciplining authority~~)) secretary on the ground that the
29 testimony or reports constitute privileged communications.

30 **Sec. 8.** RCW 18.130.172 and 2000 c 171 s 29 are each amended to
31 read as follows:

32 (1) Except for those acts of unprofessional conduct specified in
33 section 9 of this act, prior to serving a statement of charges under
34 RCW 18.130.090 or 18.130.170, the ((~~disciplinary authority~~)) secretary
35 may furnish a statement of allegations to the licensee or applicant
36 along with a detailed summary of the evidence relied upon to establish
37 the allegations and a proposed stipulation for informal resolution of

1 the allegations. These documents shall be exempt from public
2 disclosure until such time as the allegations are resolved either by
3 stipulation or otherwise.

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

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

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

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

3 NEW SECTION. **Sec. 9.** A new section is added to chapter 18.130 RCW
4 to read as follows:

5 (1) The disciplining authority shall revoke the license of a
6 license holder who has any combination of three findings that he or she
7 has committed any of the following acts of unprofessional conduct
8 within a ten-year period:

9 (a) Any act defined in RCW 18.130.180(4) that causes the death of
10 or severe injury to a patient or creates a significant risk of harm to
11 the public;

12 (b) Any act defined in RCW 18.130.180(6);

13 (c) Any act defined in RCW 18.130.180(7) that causes the death of
14 or severe injury to a patient or creates a significant risk of harm to
15 the public;

16 (d) Any act defined in RCW 18.130.180(17);

17 (e) Any act defined in RCW 18.130.180(23) that causes the death of
18 or severe injury to a patient or creates a significant risk of harm to
19 the public;

20 (f) Any act of abuse to a client or patient as defined in RCW
21 18.130.180(24); and

22 (g) Any sexual contact with a client or patient as defined in RCW
23 18.130.180(24) where the client or patient did not consent.

24 (2) A finding of mitigating circumstance for an act of
25 unprofessional conduct specified in this section may be issued and
26 applied one time for any license holder or applicant for a license.
27 After a finding of mitigating circumstances is issued and applied, no
28 subsequent findings under this section may consider any mitigating
29 circumstances. The following mitigating circumstances may be
30 considered:

31 (a) For subsection (1)(a) of this section, the act involved a high-
32 risk procedure, there was no lower-risk alternative to that procedure,
33 the patient was aware of the risks of the procedure, and prior to the
34 institution of disciplinary actions the license holder took appropriate
35 remedial measures;

36 (b) There is a strong potential for rehabilitation of the license
37 holder; or

1 (c) There is a strong potential for remedial education and training
2 to prevent future harm to the public.

3 (3) Nothing in this section limits the authority of the
4 disciplining authority to revoke a license or take other disciplinary
5 action when the license holder has committed only one or two acts of
6 unprofessional conduct instead of three.

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