
HOUSE BILL 2326

State of Washington 58th Legislature 2004 Regular Session

By Representatives Campbell, Cody, O'Brien, Kenney, Moeller and Edwards

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Committee on Health Care.

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 reserved to the health

1 professionals sitting on the boards and commissions as the final
2 authority on case dispositions. Further, the creation of statutorily
3 mandated sanctions for certain acts of unprofessional conduct will
4 ensure a fair and uniform disposition of the most severe cases that
5 threaten the public. These measures will ensure that investigations
6 and charging decisions are free of any potential conflicts of interest
7 and that sanctions are uniform across professional lines.

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

10 The disciplining authority has the following authority:

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

13 (2) To ~~((investigate))~~ provide consultation and assistance with
14 investigations of all complaints or reports of unprofessional conduct
15 as defined in this chapter as requested by the secretary and to hold
16 hearings as provided in this chapter;

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

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

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

23 (6) In the course of ~~((investigating))~~ consulting and assisting
24 with the investigation of a complaint or report of unprofessional
25 conduct, to conduct practice reviews as requested by the secretary;

26 ~~((To take emergency action ordering summary suspension of a~~
27 ~~license, or restriction or limitation of the licensee's practice~~
28 ~~pending proceedings by the disciplining authority;~~

29 ~~+8))~~ To use a presiding officer as authorized in RCW 18.130.095(3)
30 or the office of administrative hearings as authorized in chapter 34.12
31 RCW to conduct hearings. The disciplining authority shall make the
32 final decision regarding disposition of the license unless the
33 disciplining authority elects to delegate in writing the final decision
34 to the presiding officer;

35 ~~((+9))~~ (8) To use individual members of the boards to ~~((direct))~~
36 provide consultation and assistance with investigations as requested by

1 the secretary. However, the member of the board shall not subsequently
2 participate in the hearing of the case;

3 ~~((+10))~~ (9) To enter into contracts for professional services
4 determined to be necessary for adequate enforcement of this chapter;

5 ~~((+11))~~ (10) To contract with licensees or other persons or
6 organizations to provide services necessary for the monitoring and
7 supervision of licensees who are placed on probation, whose
8 professional activities are restricted, or who are for any authorized
9 purpose subject to monitoring by the disciplining authority;

10 ~~((+12))~~ (11) To adopt standards of professional conduct or
11 practice;

12 ~~((+13))~~ (12) To grant or deny license applications, and in the
13 event of a finding of unprofessional conduct by an applicant or license
14 holder, to impose any sanction against a license applicant or license
15 holder provided by this chapter;

16 ~~((+14))~~ (13) To designate individuals authorized to sign subpoenas
17 and statements of charges;

18 ~~((+15))~~ (14) To establish panels consisting of three or more
19 members of the board to perform any duty or authority within the
20 board's jurisdiction under this chapter;

21 ~~((+16))~~ (15) To review and audit the records of licensed health
22 facilities' or services' quality assurance committee decisions in which
23 a licensee's practice privilege or employment is terminated or
24 restricted. Each health facility or service shall produce and make
25 accessible to the disciplining authority the appropriate records and
26 otherwise facilitate the review and audit. Information so gained shall
27 not be subject to discovery or introduction into evidence in any civil
28 action pursuant to RCW 70.41.200(3).

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

31 In addition to the authority specified in RCW 18.130.050, the
32 secretary has the following additional authority:

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

35 (2) Upon the request of a board, to appoint pro tem members to
36 participate as members of a panel of the board in connection with
37 proceedings specifically identified in the request. Individuals so

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

20 (3) To establish fees to be paid for witnesses, expert witnesses,
21 and consultants used in any investigation and to establish fees to
22 witnesses in any agency adjudicative proceeding as authorized by RCW
23 34.05.446;

24 (4) To conduct investigations and practice reviews (~~at the~~
25 ~~direction of the disciplining authority~~) and to issue subpoenas,
26 administer oaths, and take depositions in the course of conducting
27 those investigations and practice reviews at the direction of the
28 disciplining authority;

29 (5) To review results of investigations and determine the
30 appropriate disposition, which may include closure, notice of
31 correction, stipulations permitted by RCW 18.130.172, or issuance of a
32 statement of charges;

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

36 (7) To have the health professions regulatory program establish a
37 system to recruit potential public members, to review the
38 qualifications of such potential members, and to provide orientation to

1 those public members appointed pursuant to law by the governor or the
2 secretary to the boards and commissions specified in RCW
3 18.130.040(2)(b), and to the advisory committees and (~~councils~~) for
4 professions specified in RCW 18.130.040(2)(a).

5 **Sec. 4.** RCW 18.130.080 and 1998 c 132 s 9 are each amended to read
6 as follows:

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

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

30 (1) If the (~~disciplining authority~~) secretary determines, upon
31 investigation, that there is reason to believe a violation of RCW
32 18.130.180 has occurred, a statement of charge or charges shall be
33 prepared and served upon the license holder or applicant at the
34 earliest practical time. The statement of charge or charges shall be
35 accompanied by a notice that the license holder or applicant may
36 request a hearing to contest the charge or charges. The license holder

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

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

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

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

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

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

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

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

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

26 (1) If the (~~disciplining authority~~) secretary believes a license
27 holder or applicant may be unable to practice with reasonable skill and
28 safety to consumers by reason of any mental or physical condition, a
29 statement of charges in the name of the (~~disciplining authority~~)
30 secretary shall be served on the license holder or applicant and notice
31 shall also be issued providing an opportunity for a hearing. The
32 hearing shall be limited to the sole issue of the capacity of the
33 license holder or applicant to practice with reasonable skill and
34 safety. If the disciplining authority determines that the license
35 holder or applicant is unable to practice with reasonable skill and
36 safety for one of the reasons stated in this subsection, the

1 disciplining authority shall impose such sanctions under RCW 18.130.160
2 as is deemed necessary to protect the public.

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

27 (b) Upon submission of a timely response to the notice of intent to
28 order a mental or physical examination, the license holder or applicant
29 shall have an opportunity to respond to or refute such an order by
30 submission of evidence or written argument or both. The evidence and
31 written argument supporting and opposing the mental or physical
32 examination shall be reviewed by either a panel of the disciplining
33 authority members who have not been involved with the allegations
34 against the license holder or applicant or a neutral decision maker
35 approved by the disciplining authority. The reviewing panel of the
36 disciplining authority or the approved neutral decision maker may, in
37 its discretion, ask for oral argument from the parties. The reviewing
38 panel of the disciplining authority or the approved neutral decision

1 maker shall prepare a written decision as to whether: There is
2 reasonable cause to believe that the license holder or applicant may be
3 unable to practice with reasonable skill and safety by reason of a
4 mental or physical condition, or the manner or form of the mental or
5 physical examination is appropriate, or both.

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

23 (d) If the disciplining authority finds that a license holder or
24 applicant has failed to submit to a properly ordered mental or physical
25 examination, then the disciplining authority may order appropriate
26 action or discipline under RCW 18.130.180(9), unless the failure was
27 due to circumstances beyond the person's control. However, no such
28 action or discipline may be imposed unless the license holder or
29 applicant has had the notice and opportunity to challenge the
30 (~~(disciplining authority's)~~) secretary's grounds for ordering the
31 examination, to challenge the manner and form, to assert any other
32 defenses, and to have such challenges or defenses considered by either
33 a panel of the disciplining authority members who have not been
34 involved with the allegations against the license holder or applicant
35 or a neutral decision maker approved by the disciplining authority, as
36 previously set forth in this section. Further, the action or
37 discipline ordered by the disciplining authority shall not be more

1 severe than a suspension of the license, certification, registration or
2 application until such time as the license holder or applicant complies
3 with the properly ordered mental or physical examination.

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

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

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

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

26 (1) Except for those acts of unprofessional conduct specified in
27 section 9 of this act, prior to serving a statement of charges under
28 RCW 18.130.090 or 18.130.170, the ((~~disciplinary authority~~)) secretary
29 may furnish a statement of allegations to the licensee or applicant
30 along with a detailed summary of the evidence relied upon to establish
31 the allegations and a proposed stipulation for informal resolution of
32 the allegations. These documents shall be exempt from public
33 disclosure until such time as the allegations are resolved either by
34 stipulation or otherwise.

35 (2) The ((~~disciplinary authority~~)) secretary and the applicant or
36 licensee may stipulate that the allegations may be disposed of
37 informally in accordance with this subsection. The stipulation shall

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

20 (3) If the licensee or applicant declines to agree to disposition
21 of the charges by means of a stipulation pursuant to subsection (2) of
22 this section, the ((disciplinary authority)) secretary may proceed to
23 formal disciplinary action pursuant to RCW 18.130.090 or 18.130.170.

24 (4) Upon execution of a stipulation under subsection (2) of this
25 section by both the licensee or applicant and the ((disciplinary
26 authority)) secretary, the complaint is deemed disposed of and shall
27 become subject to public disclosure on the same basis and to the same
28 extent as other records of the ((disciplinary authority)) secretary.
29 Should the licensee or applicant fail to pay any agreed reimbursement
30 within thirty days of the date specified in the stipulation for
31 payment, the ((disciplinary authority)) secretary may seek collection
32 of the amount agreed to be paid in the same manner as enforcement of a
33 fine under RCW 18.130.165.

34 NEW SECTION. Sec. 9. A new section is added to chapter 18.130 RCW
35 to read as follows:

36 (1) In addition to any other sanction specified in RCW 18.130.160
37 that the disciplining authority deems appropriate to protect or

1 compensate the public or rehabilitate a license holder or applicant, a
2 license holder or applicant that is the subject of any finding by the
3 disciplining authority that determines that he or she has committed any
4 of the following acts of unprofessional conduct for the first time is
5 subject to at least the following sanctions:

6 (a) Any act defined in RCW 18.130.180(4) that causes the death of
7 or severe injury to a patient or creates a significant risk of harm to
8 the public shall result in the suspension of the license for at least
9 two years;

10 (b) Any act defined in RCW 18.130.180(6) shall result in the
11 suspension of the license for at least six months;

12 (c) Any act defined in RCW 18.130.180(7) that causes the death of
13 or severe injury to a patient or creates a significant risk of harm to
14 the public shall result in the suspension of the license for at least
15 two years;

16 (d) Any act defined in RCW 18.130.180(17) shall result in the
17 suspension of the license for at least six months;

18 (e) Any act defined in RCW 18.130.180(23) that causes the death of
19 or severe injury to a patient or creates a significant risk of harm to
20 the public shall result in the suspension of the license for at least
21 two years;

22 (f) Any act of abuse to a client or patient as defined in RCW
23 18.130.180(24) shall result in the suspension of the license for at
24 least one year; and

25 (g) Any sexual contact with a client or patient as defined in RCW
26 18.130.180(24) where the client or patient did not consent shall result
27 in the suspension of the license for at least one year.

28 (2) In addition to any other sanction specified in RCW 18.130.160
29 that the disciplining authority deems appropriate to protect or
30 compensate the public or rehabilitate a license holder or applicant, a
31 license holder or applicant that is the subject of any finding by the
32 disciplining authority that determines that he or she has committed any
33 of the following acts of unprofessional conduct for the second time
34 within a ten-year period is subject to at least the following
35 sanctions:

36 (a) Any act defined in RCW 18.130.180(4) that causes the death of
37 or severe injury to a patient or creates a significant risk of harm to

1 the public shall result in the revocation of the license for at least
2 five years;

3 (b) Any act defined in RCW 18.130.180(6) shall result in the
4 suspension of the license for at least two years;

5 (c) Any act defined in RCW 18.130.180(7) that causes the death of
6 or severe injury to a patient or creates a significant risk of harm to
7 the public shall result in the revocation of the license for at least
8 five years;

9 (d) Any conviction defined in RCW 18.130.180(17) shall result in
10 the suspension of the license for at least two years;

11 (e) Any act defined in RCW 18.130.180(23) that causes the death of
12 or severe injury to a patient or creates a significant risk of harm to
13 the public shall result in the suspension of the license for at least
14 five years;

15 (f) Any act of abuse to a client or patient as defined in RCW
16 18.130.180(24) shall result in the suspension of the license for at
17 least three years; and

18 (g) Any sexual contact with a client or patient as defined in RCW
19 18.130.180(24) where the client or patient did not consent shall result
20 in the suspension of the license for at least three years.

21 (3) The disciplining authority shall revoke the license of any
22 license holder that has any combination of three findings within a
23 ten-year period that he or she has committed any of the acts of
24 unprofessional conduct specified in subsections (1) and (2) of this
25 section.

26 (4)(a) The sanctions specified in subsections (1) and (2) of this
27 section may be adjusted or stayed and the specific finding deemed
28 exempt from the compounding provisions of this section upon issuance of
29 a finding of the presence of any of the following mitigating
30 circumstances:

31 (i) For subsections (1)(a) and (2)(a) of this section, the act
32 involved a high-risk procedure, there was no lower-risk alternative to
33 that procedure, the patient was aware of the risks of the procedure,
34 and prior to the institution of disciplinary actions the license holder
35 took appropriate remedial measures;

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

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

3 (b) A finding of mitigating circumstances for an act of
4 unprofessional conduct specified in this section may only be issued and
5 applied one time for any license holder. After a finding of mitigating
6 circumstances is issued and applied, no subsequent findings under this
7 section may consider any mitigating circumstances.

8 (c) A finding of mitigating circumstances for an act of
9 unprofessional conduct specified in this section may be issued and
10 applied one time for any applicant. Such a finding as an applicant
11 does not preclude the individual from obtaining a later finding of
12 mitigating circumstances as provided under this subsection (4) and
13 applicable to license holders.

14 (5) Nothing in this section limits the disciplining authority from
15 imposing any sanction that it determines is necessary to protect or
16 compensate the public for any act of unprofessional conduct other than
17 those listed in subsections (1) and (2) of this section.

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