
ENGROSSED SUBSTITUTE HOUSE BILL 2834

State of Washington

58th Legislature

2004 Regular Session

By House Committee on Health Care (originally sponsored by Representatives Schual-Berke, Kagi, Cody, Lantz, Linville, Morrell, Wallace, Kenney, O'Brien, Miloscia, Sommers, Rockefeller and Darneille)

READ FIRST TIME 02/05/04.

1 AN ACT Relating to improving health professions discipline;
2 amending RCW 4.24.260, 18.71.0193, 18.130.010, 18.130.180, and
3 18.130.900; and creating new sections.

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

5 NEW SECTION. **Sec. 1.** The legislature finds that:

6 (1) The protection of the health and safety of the people of
7 Washington state is a paramount responsibility entrusted to the state.
8 One of the means for achieving such protection is through regulation of
9 health professionals and effective discipline of those health care
10 professionals who engage in unprofessional conduct. The vast majority
11 of health professionals are dedicated to their profession, and provide
12 quality services to those in their care. However, effective mechanisms
13 are needed to ensure that the small minority of health professionals
14 who engage in unprofessional conduct are reported and disciplined in a
15 timely and effective manner.

16 (2) Jurisdiction for health professions disciplinary processes is
17 divided between the secretary of health and fourteen independent boards
18 and commissions. While the presence of a board or commission
19 consisting of members of the profession that they regulate may add

1 value to some steps of the disciplinary process, in other instances
2 their involvement may be unnecessary, or even an impediment, to
3 safeguarding the public's health and safety. It is in the interests of
4 both public health and safety and credentialed health care
5 professionals that the health professions disciplinary system operate
6 effectively and appropriately.

7 NEW SECTION. **Sec. 2.** (1) The task force on improvement of health
8 professions discipline is established. The governor must appoint its
9 members, and shall include:

10 (a) A representative of a medicare contracted professional review
11 organization in Washington state;

12 (b) One or more representatives of the University of Washington
13 school of health sciences or school of public health with expertise in
14 health professions regulation;

15 (c) A representative of the foundation for health care quality;

16 (d) Four representatives of a broad range of different types of
17 health care professionals, including one physician, none of whom
18 currently serve, or have served in the past, on a health professions
19 disciplinary board or commission;

20 (e) A representative of hospital-based continuous quality
21 improvement programs under RCW 70.41.200;

22 (f) A representative of a hospital peer review committee;

23 (g) The secretary of the department of health;

24 (h) A representative of the superior court judges association;

25 (i) A representative of the Washington state bar association who is
26 an attorney with expertise in defending health professionals in health
27 professions disciplinary proceedings in Washington;

28 (j) A representative of health care consumers, who does not
29 currently serve and has not in the past served, on a health professions
30 disciplinary board or commission;

31 (k) The attorney general or his or her designee; and

32 (l) Three members of the public, one of whom is a current or former
33 public member of a disciplining authority included in chapter 18.130
34 RCW.

35 (2) The task force shall conduct an independent review of the
36 funding of the health professions and all phases of the current health

1 professions disciplinary process, from report intake through final case
2 closure, and shall, at a minimum, examine and address the following
3 issues:

4 (a) The ability of the disciplining authorities identified in RCW
5 18.130.040 to effectively safeguard the public from potentially harmful
6 health care practitioners while also ensuring the due process rights of
7 credentialed health care practitioners;

8 (b) The feasibility of developing a uniform performance measurement
9 system for health professions discipline;

10 (c) Whether there are components to the current health professions
11 discipline system that serve as impediments to improving the quality of
12 health professions discipline, including consideration of:

13 (i) The value of boards and commissions in the health professions
14 disciplinary process; and

15 (ii) The respective roles of the secretary and boards and
16 commissions in health professions disciplinary functions;

17 (d) The feasibility of allowing law enforcement agencies to share
18 information from criminal investigations of credentialed health care
19 providers regardless of whether the provider was not ultimately
20 convicted;

21 (e) The extent to which investigation, charging, and sanctioning
22 decisions are consistently applied across and within each of the
23 disciplining authorities;

24 (f) The merits of limiting the public disclosure of certain
25 information related to the health professions disciplinary process
26 including complaint closure without investigation, complaint closure
27 after investigation, and findings after adjudication of no violation of
28 the uniform disciplinary act;

29 (g) The extent to which sanctions deviate from advisory guidelines
30 regarding sanctions and the circumstances behind those deviations; and

31 (h) Alternative fee structures for health care professionals to
32 simplify funding and the use of those funds across all health care
33 professions.

34 (3) The task force may establish technical advisory committees to
35 assist in its efforts, and shall provide opportunities for interested
36 parties to comment upon the task force's findings and recommendations
37 prior to being finalized.

1 (4) Staff support to the task force shall be provided by the
2 department of health and the office of financial management.

3 (5) The task force shall submit its report and recommendations for
4 improvement of health professions discipline to the relevant committees
5 of the legislature and the governor by October 1, 2005.

6 (6) Nothing in this act limits the secretary of health's authority
7 to modify the internal processes or organizational framework of the
8 department.

9 (7) Members of the task force shall be reimbursed for travel
10 expenses as provided in RCW 43.03.050 and 43.03.060.

11 **Sec. 3.** RCW 4.24.260 and 1994 sp.s. c 9 s 701 are each amended to
12 read as follows:

13 (~~Physicians licensed under chapter 18.71 RCW, dentists licensed~~
14 ~~under chapter 18.32 RCW, and pharmacists licensed under chapter 18.64~~
15 ~~RCW)) Any member of a health profession listed under RCW 18.130.040
16 who, in good faith, makes a report, files charges, or presents evidence
17 against another member of ((their)) a health profession based on the
18 claimed ((incompetency or gross misconduct)) unprofessional conduct as
19 provided in RCW 18.130.180 or inability to practice with reasonable
20 skill and safety to consumers by reason of any physical or mental
21 condition as provided in RCW 18.130.170 of such person before the
22 ((medical quality assurance commission established under chapter 18.71
23 RCW, in a proceeding under chapter 18.32 RCW, or to the board of
24 pharmacy under RCW 18.64.160)) agency, board, or commission responsible
25 for disciplinary activities for the person's profession under chapter
26 18.130 RCW, shall be immune from civil action for damages arising out
27 of such activities. A person prevailing upon the good faith defense
28 provided for in this section is entitled to recover expenses and
29 reasonable attorneys' fees incurred in establishing the defense.~~

30 **Sec. 4.** RCW 18.71.0193 and 1994 sp.s. c 9 s 327 are each amended
31 to read as follows:

32 (1) A (~~licensed health care professional~~) physician licensed
33 under this chapter shall report to the commission when he or she has
34 personal knowledge that a practicing physician has either committed an
35 act or acts which may constitute statutorily defined unprofessional
36 conduct or that a practicing physician may be unable to practice

1 medicine with reasonable skill and safety to patients by reason of
2 illness, drunkenness, excessive use of drugs, narcotics, chemicals, or
3 any other type of material, or as a result of any mental or physical
4 conditions.

5 (2) Reporting under this section is not required by:

6 (a) An appropriately appointed peer review committee member of a
7 licensed hospital or by an appropriately designated professional review
8 committee member of a county or state medical society during the
9 investigative phase of their respective operations if these
10 investigations are completed in a timely manner; or

11 (b) A treating licensed health care professional of a physician
12 currently involved in a treatment program as long as the physician
13 patient actively participates in the treatment program and the
14 physician patient's impairment does not constitute a clear and present
15 danger to the public health, safety, or welfare.

16 (3) The commission may impose disciplinary sanctions, including
17 license suspension or revocation, on any (~~health care professional~~
18 ~~subject to the jurisdiction of the commission~~) physician licensed
19 under this chapter who has failed to comply with this section.

20 (4) Every physician licensed under this chapter who reports to the
21 commission as required under subsection (1) of this section in good
22 faith is immune from civil liability for damages arising out of the
23 report, whether direct or derivative. A person prevailing upon the
24 defense provided for in this section is entitled to recover expenses
25 and reasonable attorneys' fees incurred in establishing the defense.

26 **Sec. 5.** RCW 18.130.010 and 1994 sp.s. c 9 s 601 are each amended
27 to read as follows:

28 It is the intent of the legislature to strengthen and consolidate
29 disciplinary and licensure procedures for the licensed health and
30 health-related professions and businesses by providing a uniform
31 disciplinary act with standardized procedures for the licensure of
32 health care professionals and the enforcement of laws the purpose of
33 which is to (~~assure the public of the adequacy of professional~~
34 ~~competence and conduct in the healing arts~~) reduce unprofessional
35 conduct and unsafe practices in health care, protect the public health,
36 safety, and welfare, and promote patient safety.

1 It is also the intent of the legislature that all health and
2 health-related professions newly credentialed by the state come under
3 the Uniform Disciplinary Act.

4 Further, the legislature declares that the addition of public
5 members on all health care commissions and boards can give both the
6 state and the public, which it has a paramount statutory responsibility
7 to protect, assurances of accountability and confidence in the various
8 practices of health care.

9 **Sec. 6.** RCW 18.130.180 and 1995 c 336 s 9 are each amended to read
10 as follows:

11 The following conduct, acts, or conditions constitute
12 unprofessional conduct for any license holder or applicant under the
13 jurisdiction of this chapter:

14 (1) The commission of any act involving moral turpitude,
15 dishonesty, or corruption relating to the practice of the person's
16 profession, whether the act constitutes a crime or not. If the act
17 constitutes a crime, conviction in a criminal proceeding is not a
18 condition precedent to disciplinary action. Upon such a conviction,
19 however, the judgment and sentence is conclusive evidence at the
20 ensuing disciplinary hearing of the guilt of the license holder or
21 applicant of the crime described in the indictment or information, and
22 of the person's violation of the statute on which it is based. For the
23 purposes of this section, conviction includes all instances in which a
24 plea of guilty or nolo contendere is the basis for the conviction and
25 all proceedings in which the sentence has been deferred or suspended.
26 Nothing in this section abrogates rights guaranteed under chapter 9.96A
27 RCW;

28 (2) Misrepresentation or concealment of a material fact in
29 obtaining a license or in reinstatement thereof;

30 (3) All advertising which is false, fraudulent, or misleading;

31 (4) Incompetence, negligence, or malpractice which results in
32 injury to a patient or which creates an unreasonable risk that a
33 patient may be harmed. The use of a nontraditional treatment by itself
34 shall not constitute unprofessional conduct, provided that it does not
35 result in injury to a patient or create an unreasonable risk that a
36 patient may be harmed;

1 (5) Suspension, revocation, or restriction of the individual's
2 license to practice any health care profession by competent authority
3 in any state, federal, or foreign jurisdiction, a certified copy of the
4 order, stipulation, or agreement being conclusive evidence of the
5 revocation, suspension, or restriction. Full faith and credit will be
6 extended to the action by the competent authority, even if procedures
7 or standards of proof vary in the other jurisdiction;

8 (6) The possession, use, prescription for use, or distribution of
9 controlled substances or legend drugs in any way other than for
10 legitimate or therapeutic purposes, diversion of controlled substances
11 or legend drugs, the violation of any drug law, or prescribing
12 controlled substances for oneself;

13 (7) Violation of any state or federal statute or administrative
14 rule regulating the profession in question, including any statute or
15 rule defining or establishing standards of patient care or professional
16 conduct or practice;

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

18 (a) Not furnishing any papers or documents;

19 (b) Not furnishing in writing a full and complete explanation
20 covering the matter contained in the complaint filed with the
21 disciplining authority;

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

25 (d) Not providing reasonable and timely access for authorized
26 representatives of the disciplining authority seeking to perform
27 practice reviews at facilities utilized by the license holder;

28 (9) Failure to comply with an order issued by the disciplining
29 authority or a stipulation for informal disposition entered into with
30 the disciplining authority;

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

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

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

36 (13) Misrepresentation or fraud in any aspect of the conduct of the
37 business or profession;

- 1 (14) Failure to adequately supervise auxiliary staff to the extent
2 that the consumer's health or safety is at risk;
- 3 (15) Engaging in a profession involving contact with the public
4 while suffering from a contagious or infectious disease involving
5 serious risk to public health;
- 6 (16) Promotion for personal gain of any unnecessary or
7 inefficacious drug, device, treatment, procedure, or service;
- 8 (17) Conviction of any gross misdemeanor or felony relating to the
9 practice of the person's profession. For the purposes of this
10 subsection, conviction includes all instances in which a plea of guilty
11 or nolo contendere is the basis for conviction and all proceedings in
12 which the sentence has been deferred or suspended. Nothing in this
13 section abrogates rights guaranteed under chapter 9.96A RCW;
- 14 (18) The procuring, or aiding or abetting in procuring, a criminal
15 abortion;
- 16 (19) The offering, undertaking, or agreeing to cure or treat
17 disease by a secret method, procedure, treatment, or medicine, or the
18 treating, operating, or prescribing for any health condition by a
19 method, means, or procedure which the licensee refuses to divulge upon
20 demand of the disciplining authority;
- 21 (20) The willful betrayal of a practitioner-patient privilege as
22 recognized by law;
- 23 (21) Violation of chapter 19.68 RCW;
- 24 (22) Interference with an investigation or disciplinary proceeding
25 by willful misrepresentation of facts before the disciplining authority
26 or its authorized representative, or by the use of threats or
27 harassment against any patient or witness to prevent them from
28 providing evidence in a disciplinary proceeding or any other legal
29 action, or by the use of financial inducements to any patient or
30 witness to prevent or attempt to prevent him or her from providing
31 evidence in a disciplinary proceeding;
- 32 (23) Current misuse of:
- 33 (a) Alcohol;
- 34 (b) Controlled substances; or
- 35 (c) Legend drugs;
- 36 (24) Abuse of a client or patient or sexual contact with a client
37 or patient;

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

8 **Sec. 7.** RCW 18.130.900 and 1986 c 259 s 14 are each amended to
9 read as follows:

10 (1) This chapter shall be known and cited as the uniform
11 disciplinary act.

12 (2) This chapter applies to any conduct, acts, or conditions
13 occurring on or after June 11, 1986.

14 (3) This chapter does not apply to or govern the construction of
15 and disciplinary action for any conduct, acts, or conditions occurring
16 prior to June 11, 1986. Such conduct, acts, or conditions must be
17 construed and disciplinary action taken according to the provisions of
18 law existing at the time of the occurrence in the same manner as if
19 this chapter had not been enacted.

20 (4) The amendments to chapter 18.130 RCW in sections 5 and 6 of
21 this act are clarifying amendments and should not be construed as a
22 change in the construction and application of chapter 18.130 RCW.

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