
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, and 18.130.180; and
3 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) Two representatives of health care professionals, including one
17 physician, neither of whom currently serve, or have served in the past,
18 on a health professions disciplinary board or commission;

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

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

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

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

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

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

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

31 (l) A current or former public member of a disciplining authority
32 included in chapter 18.130 RCW.

33 (2) The task force shall conduct an independent review of the
34 funding of the health professions and all phases of the current health
35 professions disciplinary process, from report intake through final case
36 closure, and shall, at a minimum, examine and address the following
37 issues:

1 (a) The ability of the disciplining authorities identified in RCW
2 18.130.040 to effectively safeguard the public from potentially harmful
3 health care practitioners while also ensuring the due process rights of
4 credentialed health care practitioners;

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

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

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

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

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

18 (e) The extent to which sanctions deviate from advisory guidelines
19 regarding sanctions and the circumstances behind those deviations; and

20 (f) Alternative fee structures for health care professionals to
21 simplify funding and the use of those funds across all health care
22 professions.

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

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

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

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

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

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

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

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

22 (1) A (~~licensed health care professional~~) physician licensed
23 under this chapter shall report to the commission when he or she has
24 personal knowledge that a practicing physician has either committed an
25 act or acts which may constitute statutorily defined unprofessional
26 conduct or that a practicing physician may be unable to practice
27 medicine with reasonable skill and safety to patients by reason of
28 illness, drunkenness, excessive use of drugs, narcotics, chemicals, or
29 any other type of material, or as a result of any mental or physical
30 conditions.

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

32 (a) An appropriately appointed peer review committee member of a
33 licensed hospital or by an appropriately designated professional review
34 committee member of a county or state medical society during the
35 investigative phase of their respective operations if these
36 investigations are completed in a timely manner; or

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

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

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

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

18 It is the intent of the legislature to strengthen and consolidate
19 disciplinary and licensure procedures for the licensed health and
20 health-related professions and businesses by providing a uniform
21 disciplinary act with standardized procedures for the licensure of
22 health care professionals and the enforcement of laws the purpose of
23 which is to (~~assure the public of the adequacy of professional~~
24 ~~competence and conduct in the healing arts~~) reduce unprofessional
25 conduct and unsafe practices in health care, protect the public health,
26 safety, and welfare, and promote patient safety.

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

30 Further, the legislature declares that the addition of public
31 members on all health care commissions and boards can give both the
32 state and the public, which it has a paramount statutory responsibility
33 to protect, assurances of accountability and confidence in the various
34 practices of health care.

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

1 The following conduct, acts, or conditions constitute
2 unprofessional conduct for any license holder or applicant under the
3 jurisdiction of this chapter:

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

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

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

21 (4) Incompetence, negligence, or malpractice which results in
22 injury to a patient or which creates an unreasonable risk that a
23 patient may be harmed. The use of a nontraditional treatment by itself
24 shall not constitute unprofessional conduct, provided that it does not
25 result in injury to a patient or create an unreasonable risk that a
26 patient may be harmed;

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

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

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

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

6 (a) Not furnishing any papers or documents;

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

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

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

16 (9) Failure to comply with an order issued by the disciplining
17 authority or a stipulation for informal disposition entered into with
18 the disciplining authority;

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

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

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

24 (13) Misrepresentation or fraud in any aspect of the conduct of the
25 business or profession;

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

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

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

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

- 1 (18) The procuring, or aiding or abetting in procuring, a criminal
2 abortion;
- 3 (19) The offering, undertaking, or agreeing to cure or treat
4 disease by a secret method, procedure, treatment, or medicine, or the
5 treating, operating, or prescribing for any health condition by a
6 method, means, or procedure which the licensee refuses to divulge upon
7 demand of the disciplining authority;
- 8 (20) The willful betrayal of a practitioner-patient privilege as
9 recognized by law;
- 10 (21) Violation of chapter 19.68 RCW;
- 11 (22) Interference with an investigation or disciplinary proceeding
12 by willful misrepresentation of facts before the disciplining authority
13 or its authorized representative, or by the use of threats or
14 harassment against any patient or witness to prevent them from
15 providing evidence in a disciplinary proceeding or any other legal
16 action, or by the use of financial inducements to any patient or
17 witness to prevent or attempt to prevent him or her from providing
18 evidence in a disciplinary proceeding;
- 19 (23) Current misuse of:
- 20 (a) Alcohol;
- 21 (b) Controlled substances; or
- 22 (c) Legend drugs;
- 23 (24) Abuse of a client or patient or sexual contact with a client
24 or patient;
- 25 (25) Acceptance of more than a nominal gratuity, hospitality, or
26 subsidy offered by a representative or vendor of medical or health-
27 related products or services intended for patients, in contemplation of
28 a sale or for use in research publishable in professional journals,
29 where a conflict of interest is presented, as defined by rules of the
30 disciplining authority, in consultation with the department, based on
31 recognized professional ethical standards.

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