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ENGROSSED SUBSTITUTE HOUSE BILL 2879

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State of Washington

58th Legislature

2004 Regular Session

By House Committee on Health Care (originally sponsored by Representatives Cody, Campbell and Schual-Berke; by request of Department of Health)

READ FIRST TIME 02/05/04.

1 AN ACT Relating to health professions disciplinary procedures;  
2 amending RCW 18.130.090 and 18.130.190; and providing an effective  
3 date.

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

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

7 (1) If the disciplining authority determines, upon investigation,  
8 that there is reason to believe a violation of RCW 18.130.180 has  
9 occurred, a statement of charge or charges (~~shall~~) may be prepared  
10 and served upon the license holder or applicant at the earliest  
11 practical time. The statement of charge or charges shall be  
12 accompanied by a notice that the license holder or applicant may  
13 request (~~a hearing~~) an adjudicative proceeding to contest the charge  
14 or charges.

15 (a) The license holder or applicant must file a request for  
16 (~~hearing~~) an adjudicative proceeding with the disciplining authority  
17 within twenty days after being served the statement of charges.  
18 Nothing in this section precludes the license holder and the  
19 disciplinary authority from engaging in settlement negotiations and

1 resolving the matter through a settlement. If the twenty-day limit  
2 results in a hardship upon the license holder or applicant, he or she  
3 may request for good cause an extension not to exceed sixty additional  
4 days. If the disciplining authority finds that there is good cause, it  
5 shall grant the extension.

6 (b) The failure to request ((a hearing)) an adjudicative proceeding  
7 constitutes a default((, whereupon)). The disciplining authority may  
8 then enter a decision on the basis of the facts available to it.

9 (2) As an alternative to filing a statement of charge or charges,  
10 the disciplining authority may issue to a license holder or applicant  
11 a written notice of action identifying the allegations and proposed  
12 sanction, except revocation, authorized under RCW 18.130.160. The  
13 notice shall state the reasons for the action. The notice shall be  
14 sent to the license holder or applicant by certified mail, with return  
15 receipt requested.

16 (a) The applicant or license holder has the right to an  
17 adjudicative proceeding. If an adjudicative proceeding is requested,  
18 the action will be of no effect, other than to identify the allegations  
19 and proposed sanctions. The license holder or applicant must file a  
20 request for an adjudicative proceeding with the disciplining authority  
21 within thirty days after being served the action. If the thirty-day  
22 limit results in a hardship upon the license holder or applicant, he or  
23 she may request for good cause an extension not to exceed sixty  
24 additional days. If the disciplining authority finds that there is  
25 good cause, it shall grant the extension.

26 (b) In the event no request for an adjudicative proceeding is filed  
27 within the time allowed by (a) of this subsection and the department  
28 has received the return receipt from the certified mailing, the action  
29 becomes effective.

30 (c) In the event that the license holder can show good cause for  
31 failure to receive and reply to the written notice of action and  
32 proposed sanction, the license holder may petition for reconsideration  
33 of the disciplinary action and imposed sanction and may request an  
34 adjudicative proceeding up to one year following the issuance of the  
35 initial written notice of charge and proposed sanction.

36 (3) If ((a hearing)) an adjudicative proceeding is requested, the  
37 time of the ((hearing)) adjudicative proceeding shall be fixed by the  
38 disciplining authority as soon as convenient, but the ((hearing))

1 adjudicative proceeding shall not be held earlier than thirty days  
2 after service of the charges or notice of action upon the license  
3 holder or applicant.

4 **Sec. 2.** RCW 18.130.190 and 2003 c 53 s 141 are each amended to  
5 read as follows:

6 (1) The secretary shall investigate complaints concerning practice  
7 by unlicensed persons of a profession or business for which a license  
8 is required by the chapters specified in RCW 18.130.040. In the  
9 investigation of the complaints, the secretary shall have the same  
10 authority as provided the secretary under RCW 18.130.050 and  
11 18.130.060.

12 (2) The secretary may issue a notice of intention to issue a cease  
13 and desist order to any person whom the secretary has reason to believe  
14 is engaged in the unlicensed practice of a profession or business for  
15 which a license is required by the chapters specified in RCW  
16 18.130.040. The person to whom such notice is issued may request an  
17 adjudicative proceeding to contest the charges. The request for  
18 hearing must be filed within twenty days after service of the notice of  
19 intention to issue a cease and desist order. The failure to request a  
20 hearing constitutes a default, whereupon the secretary may enter a  
21 permanent cease and desist order, which may include a civil fine. All  
22 proceedings shall be conducted in accordance with chapter 34.05 RCW.

23 (3) If the secretary makes a final determination that a person has  
24 engaged or is engaging in unlicensed practice, the secretary may issue  
25 a cease and desist order. In addition, the secretary may impose a  
26 civil fine in an amount not exceeding one thousand dollars for each day  
27 upon which the person engaged in unlicensed practice of a business or  
28 profession for which a license is required by one or more of the  
29 chapters specified in RCW 18.130.040. The proceeds of such fines shall  
30 be deposited to the health professions account.

31 (4) If the secretary makes a written finding of fact that the  
32 public interest will be irreparably harmed by delay in issuing an  
33 order, the secretary may issue a temporary cease and desist order. The  
34 person receiving a temporary cease and desist order shall be provided  
35 an opportunity for a prompt hearing. The temporary cease and desist  
36 order shall remain in effect until further order of the secretary. The

1 failure to request a prompt or regularly scheduled hearing constitutes  
2 a default, whereupon the secretary may enter a permanent cease and  
3 desist order, which may include a civil fine.

4 (5) Neither the issuance of a cease and desist order nor payment of  
5 a civil fine shall relieve the person so practicing or operating a  
6 business without a license from criminal prosecution therefor, but the  
7 remedy of a cease and desist order or civil fine shall be in addition  
8 to any criminal liability. The cease and desist order is conclusive  
9 proof of unlicensed practice and may be enforced under RCW 7.21.060.  
10 This method of enforcement of the cease and desist order or civil fine  
11 may be used in addition to, or as an alternative to, any provisions for  
12 enforcement of agency orders set out in chapter 34.05 RCW.

13 (6) The attorney general, a county prosecuting attorney, the  
14 secretary, a board, or any person may in accordance with the laws of  
15 this state governing injunctions, maintain an action in the name of  
16 this state to enjoin any person practicing a profession or business for  
17 which a license is required by the chapters specified in RCW 18.130.040  
18 without a license from engaging in such practice or operating such  
19 business until the required license is secured. However, the  
20 injunction shall not relieve the person so practicing or operating a  
21 business without a license from criminal prosecution therefor, but the  
22 remedy by injunction shall be in addition to any criminal liability.

23 (7)(a) Unlicensed practice of a profession or operating a business  
24 for which a license is required by the chapters specified in RCW  
25 18.130.040, unless otherwise exempted by law, constitutes a gross  
26 misdemeanor for a single violation.

27 (b) Each subsequent violation, whether alleged in the same or in  
28 subsequent prosecutions, is a class C felony punishable according to  
29 chapter 9A.20 RCW.

30 (8) All fees, fines, forfeitures, and penalties collected or  
31 assessed by a court because of a violation of this section shall be  
32 remitted to the health professions account.

33 NEW SECTION. **Sec. 3.** Section 2 of this act takes effect January  
34 1, 2005.

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