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SENATE BILL 6724

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State of Washington

58th Legislature

2004 Regular Session

By Senators Thibaudeau, Kline, Keiser and Rasmussen

Read first time 02/05/2004. Referred to Committee on Health & Long-Term Care.

1 AN ACT Relating to improving health professions discipline;  
2 amending RCW 4.24.260, 18.71.0193, 18.57.011, 18.71.019, 18.130.010,  
3 18.130.150, 18.130.180, and 18.130.900; reenacting and amending RCW  
4 18.130.040; and creating new sections.

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

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

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

17 (2) Jurisdiction for health professions disciplinary processes is  
18 divided between the secretary of health and fourteen independent boards  
19 and commissions. While the presence of a board or commission

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

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

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

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

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

17 (d) Two representatives of health care professionals, neither of  
18 whom currently serve, or have served in the past, on a health  
19 professions 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; and

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

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

34 (a) The ability of the disciplining authorities identified in RCW  
35 18.130.040 to effectively safeguard the public from potentially harmful  
36 health care practitioners while also ensuring the due process rights of  
37 credentialed health care practitioners;

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

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

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

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

10 (d) The feasibility of allowing law enforcement agencies to share  
11 information from criminal investigations of credentialed health care  
12 providers regardless of whether the provider was not ultimately  
13 convicted; and

14 (e) Alternative fee structures for health care professionals to  
15 simplify funding and the use of those funds across all health care  
16 professions.

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

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

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

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

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

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

33 (~~Physicians licensed under chapter 18.71 RCW, dentists licensed~~  
34 ~~under chapter 18.32 RCW, and pharmacists licensed under chapter 18.64~~  
35 ~~RCW)) Any member of a health profession listed under RCW 18.130.040  
36 who, in good faith, makes a report, files charges, or presents evidence  
37 against another member of (~~their~~) a health profession based on the~~

1 ~~claimed ((incompetency or gross misconduct))~~ unprofessional conduct as  
2 provided in RCW 18.130.180 or inability to practice with reasonable  
3 skill and safety to consumers by reason of any physical or mental  
4 condition as provided in RCW 18.130.170 of such person before the  
5 ~~((medical quality assurance commission established under chapter 18.71~~  
6 ~~RCW, in a proceeding under chapter 18.32 RCW, or to the board of~~  
7 ~~pharmacy under RCW 18.64.160))~~ agency, board, or commission responsible  
8 for disciplinary activities for the person's profession under chapter  
9 18.130 RCW, shall be immune from civil action for damages arising out  
10 of such activities. A person prevailing upon the good faith defense  
11 provided for in this section is entitled to recover expenses and  
12 reasonable attorneys' fees incurred in establishing the defense and in  
13 addition shall receive statutory damages of twenty-five thousand  
14 dollars.

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

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

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

27 (a) An appropriately appointed peer review committee member of a  
28 licensed hospital or by an appropriately designated professional review  
29 committee member of a county or state medical society during the  
30 investigative phase of their respective operations if these  
31 investigations are completed in a timely manner; or

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

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

5 (4) Every physician licensed under this chapter who reports to the  
6 commission as required under subsection (1) of this section in good  
7 faith is immune from civil liability for damages arising out of the  
8 report, whether direct or derivative. A person prevailing upon the  
9 defense provided for in this section is entitled to recover expenses  
10 and reasonable attorneys' fees incurred in establishing the defense and  
11 in addition shall receive statutory damages of ten thousand dollars.  
12 Statutory damages may be denied if the court finds that the complaint  
13 or information was communicated in bad faith.

14 **Sec. 5.** RCW 18.57.011 and 1987 c 150 s 41 are each amended to read  
15 as follows:

16 (1) The uniform disciplinary act, chapter 18.130 RCW, governs  
17 unlicensed practice, the issuance and denial of licenses, and the  
18 discipline of licensees under this chapter.

19 (2) The standard of proof for all disciplinary actions, other than  
20 criminal actions, under chapter 18.130 RCW against an osteopathic  
21 physician licensed under this chapter is proof by a preponderance of  
22 the evidence, except actions where the commission orders the revocation  
23 of the osteopathic physician's license. The standard of proof to order  
24 the revocation of the osteopathic physician's license is proof by  
25 clear, cogent, and convincing evidence.

26 **Sec. 6.** RCW 18.71.019 and 1996 c 195 s 1 are each amended to read  
27 as follows:

28 (1) The Uniform Disciplinary Act, chapter 18.130 RCW, governs  
29 unlicensed practice and the issuance and denial of licenses and  
30 discipline of licensees under this chapter. When a panel of the  
31 commission revokes a license, the respondent may request review of the  
32 revocation order of the panel by the remaining members of the  
33 commission not involved in the initial investigation. The respondent's  
34 request for review must be filed within twenty days of the effective  
35 date of the order revoking the respondent's license. The review shall

1 be scheduled for hearing by the remaining members of the commission not  
2 involved in the initial investigation within sixty days. The  
3 commission shall adopt rules establishing review procedures.

4 (2) The standard of proof for all disciplinary actions, other than  
5 criminal actions, under chapter 18.130 RCW against a physician licensed  
6 under this chapter is a preponderance of the evidence, except actions  
7 where the commission orders the revocation of the physician's license.  
8 Where the commission orders the revocation of the physician's license,  
9 the standard of proof shall be clear and convincing evidence.

10 **Sec. 7.** RCW 18.130.010 and 1994 sp.s. c 9 s 601 are each amended  
11 to read as follows:

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

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

24 Further, the legislature declares that the addition of public  
25 members on all health care commissions and boards can give both the  
26 state and the public, which it has a paramount statutory responsibility  
27 to protect, assurances of accountability and confidence in the various  
28 practices of health care.

29 **Sec. 8.** RCW 18.130.040 and 2003 c 275 s 2 and 2003 c 258 s 7 are  
30 each reenacted and amended to read as follows:

31 (1) This chapter applies only to the secretary and the boards and  
32 commissions having jurisdiction in relation to the professions licensed  
33 under the chapters specified in this section. This chapter does not  
34 apply to any business or profession not licensed under the chapters  
35 specified in this section.

1           (2)(a) The secretary has authority under this chapter in relation  
2 to the following professions:

3           (i) Dispensing opticians licensed and designated apprentices under  
4 chapter 18.34 RCW;

5           (ii) Naturopaths licensed under chapter 18.36A RCW;

6           (iii) Midwives licensed under chapter 18.50 RCW;

7           (iv) Ocularists licensed under chapter 18.55 RCW;

8           (v) Massage operators and businesses licensed under chapter 18.108  
9 RCW;

10          (vi) Dental hygienists licensed under chapter 18.29 RCW;

11          (vii) Acupuncturists licensed under chapter 18.06 RCW;

12          (viii) Radiologic technologists certified and X-ray technicians  
13 registered under chapter 18.84 RCW;

14          (ix) Respiratory care practitioners licensed under chapter 18.89  
15 RCW;

16          (x) Persons registered under chapter 18.19 RCW;

17          (xi) Persons licensed as mental health counselors, marriage and  
18 family therapists, and social workers under chapter 18.225 RCW;

19          (xii) Persons registered as nursing pool operators under chapter  
20 18.52C RCW;

21          (xiii) Nursing assistants registered or certified under chapter  
22 18.88A RCW;

23          (xiv) Health care assistants certified under chapter 18.135 RCW;

24          (xv) Dietitians and nutritionists certified under chapter 18.138  
25 RCW;

26          (xvi) Chemical dependency professionals certified under chapter  
27 18.205 RCW;

28          (xvii) Sex offender treatment providers certified under chapter  
29 18.155 RCW;

30          (xviii) Persons licensed and certified under chapter 18.73 RCW or  
31 RCW 18.71.205;

32          (xix) Denturists licensed under chapter 18.30 RCW;

33          (xx) Orthotists and prosthetists licensed under chapter 18.200 RCW;

34          (xxi) Surgical technologists registered under chapter 18.215 RCW;

35 and

36          (xxii) Recreational therapists.

37          (b) The boards and commissions having authority under this chapter  
38 are as follows:

1 (i) The podiatric medical board as established in chapter 18.22  
2 RCW;

3 (ii) The chiropractic quality assurance commission as established  
4 in chapter 18.25 RCW;

5 (iii) The dental quality assurance commission as established in  
6 chapter 18.32 RCW;

7 (iv) The board of hearing and speech as established in chapter  
8 18.35 RCW;

9 (v) The board of examiners for nursing home administrators as  
10 established in chapter 18.52 RCW;

11 (vi) The optometry board as established in chapter 18.54 RCW  
12 governing licenses issued under chapter 18.53 RCW;

13 (vii) The board of osteopathic medicine and surgery as established  
14 in chapter 18.57 RCW governing licenses issued under chapters 18.57 and  
15 18.57A RCW;

16 (viii) The board of pharmacy as established in chapter 18.64 RCW  
17 governing licenses issued under chapters 18.64 and 18.64A RCW;

18 (ix) The medical quality assurance commission as established in  
19 chapter 18.71 RCW governing licenses and registrations issued under  
20 chapters 18.71 and 18.71A RCW;

21 (x) The board of physical therapy as established in chapter 18.74  
22 RCW;

23 (xi) The board of occupational therapy practice as established in  
24 chapter 18.59 RCW;

25 (xii) The nursing care quality assurance commission as established  
26 in chapter 18.79 RCW governing licenses and registrations issued under  
27 that chapter;

28 (xiii) The examining board of psychology and its disciplinary  
29 committee as established in chapter 18.83 RCW; and

30 (xiv) The veterinary board of governors as established in chapter  
31 18.92 RCW.

32 (3) In addition to the authority to discipline license holders, the  
33 disciplining authority has the authority to grant or deny licenses  
34 based on the conditions and criteria established in this chapter and  
35 the chapters specified in subsection (2) of this section. This chapter  
36 also governs any investigation, hearing, or proceeding relating to  
37 denial of licensure or issuance of a license conditioned on the



1 applicant's compliance with an order entered pursuant to RCW 18.130.160  
2 by the disciplining authority.

3 (4) The standard of proof for all disciplinary actions, other than  
4 criminal actions, under this chapter is proof by a preponderance of the  
5 evidence, except actions regarding licenses issued under chapters 18.57  
6 and 18.71 RCW. The preponderance of the evidence standard is  
7 consistent with the primary purpose for proceedings under this chapter,  
8 which is the protection of the public health, safety, and welfare.

9 (5) All disciplining authorities shall adopt procedures to ensure  
10 substantially consistent application of this chapter, the Uniform  
11 Disciplinary Act, among the disciplining authorities listed in  
12 subsection (2) of this section.

13 **Sec. 9.** RCW 18.130.150 and 1997 c 58 s 831 are each amended to  
14 read as follows:

15 (1)(a) A person whose license has been suspended or revoked under  
16 this chapter may petition the disciplining authority for reinstatement  
17 after an interval as determined by the disciplining authority in the  
18 order. The disciplining authority shall hold hearings on the petition  
19 and may deny the petition or may order reinstatement and impose terms  
20 and conditions as provided in RCW 18.130.160 and issue an order of  
21 reinstatement. The person whose license has been suspended or revoked  
22 has the burden of proving, by a preponderance of the evidence, that the  
23 license should be reinstated. The disciplining authority may consider  
24 the following nonexclusive factors when assessing whether to reinstate  
25 the license:

26 (i) The person's character, standing, and professional reputation  
27 in the community in which he or she practiced before the suspension or  
28 revocation;

29 (ii) The ethical standards the person observed in his or her health  
30 care practice;

31 (iii) The nature and character of the charges for which the license  
32 was suspended or revoked;

33 (iv) The sufficiency of the action taken in connection with the  
34 charges and whether restitution was made when required;

35 (v) The time that has elapsed since the suspension or revocation  
36 and the person's attitude, conduct, and reformation subsequent to the  
37 suspension or revocation;

1       (vi) The person's prior proficiency in practicing the profession  
2 and his or her expected competency should the license be reinstated;  
3 and

4       (vii) The sincerity, frankness, and truthfulness of the person in  
5 presenting and discussing the factors relating to the suspension or  
6 revocation.

7       **(b)** The disciplining authority may require successful completion of  
8 an examination as a condition of reinstatement.

9       **(2)** A person whose license has been suspended for noncompliance  
10 with a support order or a residential or visitation order under RCW  
11 74.20A.320 may petition for reinstatement at any time by providing the  
12 secretary a release issued by the department of social and health  
13 services stating that the person is in compliance with the order. If  
14 the person has continued to meet all other requirements for  
15 reinstatement during the suspension, the secretary shall automatically  
16 reissue the person's license upon receipt of the release, and payment  
17 of a reinstatement fee, if any.

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

20       The following conduct, acts, or conditions constitute  
21 unprofessional conduct for any license holder or applicant under the  
22 jurisdiction of this chapter:

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

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

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

4 (4) Incompetence, negligence, or malpractice which results in  
5 injury to a patient or which creates an unreasonable risk that a  
6 patient may be harmed. The use of a nontraditional treatment by itself  
7 shall not constitute unprofessional conduct, provided that it does not  
8 result in injury to a patient or create an unreasonable risk that a  
9 patient may be harmed;

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

17 (6) The possession, use, prescription for use, or distribution of  
18 controlled substances or legend drugs in any way other than for  
19 legitimate or therapeutic purposes, diversion of controlled substances  
20 or legend drugs, the violation of any drug law, or prescribing  
21 controlled substances for oneself;

22 (7) Violation of any state or federal statute or administrative  
23 rule regulating the profession in question, including any statute or  
24 rule defining or establishing standards of patient care or professional  
25 conduct or practice;

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

27 (a) Not furnishing any papers or documents;

28 (b) Not furnishing in writing a full and complete explanation  
29 covering the matter contained in the complaint filed with the  
30 disciplining authority;

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

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

37 (9) Failure to comply with an order issued by the disciplining

1 authority or a stipulation for informal disposition entered into with  
2 the disciplining authority;

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

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

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

8 (13) Misrepresentation or fraud in any aspect of the conduct of the  
9 business or profession;

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

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

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

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

23 (18) The procuring, or aiding or abetting in procuring, a criminal  
24 abortion;

25 (19) The offering, undertaking, or agreeing to cure or treat  
26 disease by a secret method, procedure, treatment, or medicine, or the  
27 treating, operating, or prescribing for any health condition by a  
28 method, means, or procedure which the licensee refuses to divulge upon  
29 demand of the disciplining authority;

30 (20) The willful betrayal of a practitioner-patient privilege as  
31 recognized by law;

32 (21) Violation of chapter 19.68 RCW;

33 (22) Interference with an investigation or disciplinary proceeding  
34 by willful misrepresentation of facts before the disciplining authority  
35 or its authorized representative, or by the use of threats or  
36 harassment against any patient or witness to prevent them from  
37 providing evidence in a disciplinary proceeding or any other legal

1 action, or by the use of financial inducements to any patient or  
2 witness to prevent or attempt to prevent him or her from providing  
3 evidence in a disciplinary proceeding;

4 (23) Current misuse of:

5 (a) Alcohol;

6 (b) Controlled substances; or

7 (c) Legend drugs;

8 (24) Abuse of a client or patient or sexual contact with a client  
9 or patient;

10 (25) Acceptance of more than a nominal gratuity, hospitality, or  
11 subsidy offered by a representative or vendor of medical or health-  
12 related products or services intended for patients, in contemplation of  
13 a sale or for use in research publishable in professional journals,  
14 where a conflict of interest is presented, as defined by rules of the  
15 disciplining authority, in consultation with the department, based on  
16 recognized professional ethical standards.

17 **Sec. 11.** RCW 18.130.900 and 1986 c 259 s 14 are each amended to  
18 read as follows:

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

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

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

29 (4) The amendments to chapter 18.130 RCW in sections 7, 8, 9, and  
30 10 of this act are clarifying amendments and should not be construed as  
31 a change in the construction and application of chapter 18.130 RCW.

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