
HOUSE BILL 2974

State of Washington 59th Legislature 2006 Regular Session

By Representatives Cody, Morrell and Moeller

Read first time 01/17/2006. Referred to Committee on Health Care.

1 AN ACT Relating to health professions discipline; amending RCW
2 18.130.070, 18.130.050, 18.130.080, 18.130.160, and 18.130.175; adding
3 new sections to chapter 18.130 RCW; adding a new section to chapter
4 43.43 RCW; repealing RCW 18.57.174 and 18.71.0193; providing an
5 effective date; and providing an expiration date.

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

7 **Sec. 1.** RCW 18.130.070 and 2005 c 470 s 2 are each amended to read
8 as follows:

9 (1) The (~~(disciplining authority may)~~) secretary shall adopt rules
10 requiring (~~(any person, including, but not limited to, licensees,~~
11 ~~corporations, organizations, health care facilities, impaired~~
12 ~~practitioner programs, or voluntary substance abuse monitoring programs~~
13 ~~approved by the disciplining authority and state or local governmental~~
14 ~~agencies,)~~) every license holder to report to the appropriate
15 disciplining authority any conviction, determination, or finding that
16 a license holder has committed an act which constitutes unprofessional
17 conduct, or to report information to the disciplining authority, an
18 impaired practitioner program, or voluntary substance abuse monitoring
19 program approved by the disciplining authority, which indicates that

1 the license holder may not be able to practice his or her profession
2 with reasonable skill and safety to consumers as a result of a mental
3 or physical condition. The secretary may adopt rules to require
4 similar reports to the appropriate disciplining authority by other
5 persons, including corporations, organizations, health care facilities,
6 impaired practitioner programs, or voluntary substance abuse monitoring
7 programs approved by a disciplining authority, and state or local
8 government agencies. If a report has been made by a hospital to the
9 department pursuant to RCW 70.41.210, a report to the disciplining
10 authority is not required. To facilitate meeting the intent of this
11 section, the cooperation of agencies of the federal government is
12 requested by reporting any conviction, determination, or finding that
13 a federal employee or contractor regulated by the disciplining
14 authorities enumerated in this chapter has committed an act which
15 constituted unprofessional conduct and reporting any information which
16 indicates that a federal employee or contractor regulated by the
17 disciplining authorities enumerated in this chapter may not be able to
18 practice his or her profession with reasonable skill and safety as a
19 result of a mental or physical condition.

20 (2) If a person fails to furnish a required report, the
21 disciplining authority may petition the superior court of the county in
22 which the person resides or is found, and the court shall issue to the
23 person an order to furnish the required report. A failure to obey the
24 order is a contempt of court as provided in chapter 7.21 RCW.

25 (3) A person is immune from civil liability, whether direct or
26 derivative, for providing information to the disciplining authority
27 pursuant to the rules adopted under subsection (1) of this section.

28 (4)(a) The holder of a license subject to the jurisdiction of this
29 chapter shall report to the disciplining authority:

30 (i) Any conviction, determination, or finding that the ((licensee))
31 license holder has committed unprofessional conduct or is unable to
32 practice with reasonable skill or safety; and

33 (ii) Any disqualification from participation in the federal
34 medicare program, under Title XVIII of the federal social security act
35 or the federal medicaid program, under Title XIX of the federal social
36 security act.

37 (b) Failure to report within thirty days of notice of the

1 conviction, determination, or finding constitutes grounds for
2 disciplinary action.

3 NEW SECTION. **Sec. 2.** A new section is added to chapter 18.130 RCW
4 to read as follows:

5 Any individual who applies for a license or temporary practice
6 permit or holds a license or temporary practice permit and is
7 prohibited from practicing a health care profession in another state
8 because of an act of unprofessional conduct that is substantially
9 equivalent to an act of unprofessional conduct prohibited by this
10 chapter or any of the chapters specified in RCW 18.130.040 is
11 prohibited from practicing a profession in this state until proceedings
12 of the appropriate disciplining authority have been completed under RCW
13 18.130.050.

14 **Sec. 3.** RCW 18.130.050 and 1995 c 336 s 4 are each amended to read
15 as follows:

16 The disciplining authority has the following authority:

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

19 (2) To investigate all complaints or reports of unprofessional
20 conduct as defined in this chapter and to hold hearings as provided in
21 this chapter;

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

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

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

28 (6) In the course of investigating a complaint or report of
29 unprofessional conduct, to conduct practice reviews;

30 (7) To take emergency action ordering summary suspension of a
31 license, or restriction or limitation of the licensee's practice
32 pending proceedings by the disciplining authority. Consistent with
33 section 2 of this act, a disciplining authority shall issue a summary
34 suspension of the license or temporary practice permit of a license
35 holder prohibited from practicing a health care profession in another
36 state because of an act of unprofessional conduct that is substantially

1 equivalent to an act of unprofessional conduct prohibited by this
2 chapter or any of the chapters specified in RCW 18.130.040. The
3 summary suspension remains in effect until proceedings by the
4 appropriate disciplining authority have been completed;

5 (8) To use a presiding officer as authorized in RCW 18.130.095(3)
6 or the office of administrative hearings as authorized in chapter 34.12
7 RCW to conduct hearings. The disciplining authority shall make the
8 final decision regarding disposition of the license unless the
9 disciplining authority elects to delegate in writing the final decision
10 to the presiding officer;

11 (9) To use individual members of the boards to direct
12 investigations. However, the member of the board shall not
13 subsequently participate in the hearing of the case;

14 (10) To enter into contracts for professional services determined
15 to be necessary for adequate enforcement of this chapter;

16 (11) To contract with licensees or other persons or organizations
17 to provide services necessary for the monitoring and supervision of
18 licensees who are placed on probation, whose professional activities
19 are restricted, or who are for any authorized purpose subject to
20 monitoring by the disciplining authority;

21 (12) To adopt standards of professional conduct or practice;

22 (13) To grant or deny license applications, and in the event of a
23 finding of unprofessional conduct by an applicant or license holder, to
24 impose any sanction consistent with section 2 of this act against a
25 license applicant or license holder provided by this chapter;

26 (14) To designate individuals authorized to sign subpoenas and
27 statements of charges;

28 (15) To establish panels consisting of three or more members of the
29 board to perform any duty or authority within the board's jurisdiction
30 under this chapter;

31 (16) To review and audit the records of licensed health facilities'
32 or services' quality assurance committee decisions in which a
33 licensee's practice privilege or employment is terminated or
34 restricted. Each health facility or service shall produce and make
35 accessible to the disciplining authority the appropriate records and
36 otherwise facilitate the review and audit. Information so gained shall
37 not be subject to discovery or introduction into evidence in any civil
38 action pursuant to RCW 70.41.200(3).

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

3 (1) A person, including but not limited to consumers, licensees,
4 corporations, organizations, health care facilities, impaired
5 practitioner programs, or voluntary substance abuse monitoring programs
6 approved by disciplining authorities, and state and local governmental
7 agencies, may submit a written complaint to the disciplining authority
8 charging a license holder or applicant with unprofessional conduct and
9 specifying the grounds therefor or to report information to the
10 disciplining authority, or voluntary substance abuse monitoring
11 program, or an impaired practitioner program approved by the
12 disciplining authority, which indicates that the license holder may not
13 be able to practice his or her profession with reasonable skill and
14 safety to consumers as a result of a mental or physical condition. If
15 the disciplining authority determines that the complaint merits
16 investigation, or if the disciplining authority has reason to believe,
17 without a formal complaint, that a license holder or applicant may have
18 engaged in unprofessional conduct, the disciplining authority shall
19 investigate to determine whether there has been unprofessional conduct.
20 In determining whether or not to investigate, the disciplining
21 authority shall consider any prior complaints received by the
22 disciplining authority, any prior findings of fact under RCW
23 18.130.110, any stipulations to informal disposition under RCW
24 18.130.172, and any comparable action taken by other state disciplining
25 authorities.

26 (2) Notwithstanding subsection (1) of this section, the
27 disciplining authority shall initiate an investigation in every
28 instance where the disciplining authority receives information that a
29 health care provider has been disqualified from participating in the
30 federal medicare program, under Title XVIII of the federal social
31 security act, or the federal medicaid program, under Title XIX of the
32 federal social security act.

33 (3) A person who files a complaint or reports information under
34 this section in good faith is immune from suit in any civil action
35 related to the filing or contents of the complaint.

36 **Sec. 5.** RCW 18.130.160 and 2001 c 195 s 1 are each amended to read
37 as follows:

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

6 (1) Revocation of the license;

7 (2) Suspension of the license for a fixed or indefinite term;

8 (3) Restriction or limitation of the practice;

9 (4) Requiring the satisfactory completion of a specific program of
10 remedial education or treatment;

11 (5) The monitoring of the practice by a supervisor approved by the
12 disciplining authority;

13 (6) Censure or reprimand;

14 (7) Compliance with conditions of probation for a designated period
15 of time;

16 (8) Payment of a fine for each violation of this chapter, not to
17 exceed five thousand dollars per violation. Funds received shall be
18 placed in the health professions account;

19 (9) Denial of the license request;

20 (10) Corrective action;

21 (11) Refund of fees billed to and collected from the consumer;

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

24 Any of the actions under this section may be totally or partly
25 stayed by the disciplining authority. Safeguarding the public's health
26 and safety is the paramount responsibility of every disciplining
27 authority and in determining what action is appropriate, the
28 disciplining authority must first consider what sanctions are necessary
29 to protect or compensate the public. Only after such provisions have
30 been made may the disciplining authority consider and include in the
31 order requirements designed to rehabilitate the license holder or
32 applicant. All costs associated with compliance with orders issued
33 under this section are the obligation of the license holder or
34 applicant.

35 The licensee or applicant may enter into a stipulated disposition
36 of charges that includes one or more of the sanctions of this section,
37 but only after a statement of charges has been issued and the licensee
38 has been afforded the opportunity for a hearing and has elected on the

1 record to forego such a hearing. The stipulation shall either contain
2 one or more specific findings of unprofessional conduct or inability to
3 practice, or a statement by the licensee acknowledging that evidence is
4 sufficient to justify one or more specified findings of unprofessional
5 conduct or inability to practice. The stipulation entered into
6 pursuant to this subsection shall be considered formal disciplinary
7 action for all purposes.

8 **Sec. 6.** RCW 18.130.175 and 2005 c 274 s 233 are each amended to
9 read as follows:

10 (1) In lieu of disciplinary action under RCW 18.130.160 and if the
11 disciplining authority determines that the unprofessional conduct may
12 be the result of substance abuse, the disciplining authority may refer
13 the license holder to a voluntary substance abuse monitoring program
14 approved by the disciplining authority.

15 The cost of the treatment shall be the responsibility of the
16 license holder, but the responsibility does not preclude payment by an
17 employer, existing insurance coverage, or other sources. Primary
18 alcoholism or other drug addiction treatment shall be provided by
19 approved treatment programs under RCW 70.96A.020 or by any other
20 provider approved by the entity or the commission. However, nothing
21 shall prohibit the disciplining authority from approving additional
22 services and programs as an adjunct to primary alcoholism or other drug
23 addiction treatment. The disciplining authority may also approve the
24 use of out-of-state programs. Referral of the license holder to the
25 program shall be done only with the consent of the license holder.
26 Referral to the program may also include probationary conditions for a
27 designated period of time. If the license holder does not consent to
28 be referred to the program or does not successfully complete the
29 program, the disciplining authority may take appropriate action under
30 RCW 18.130.160 which in all cases must include suspension of the
31 license until the disciplining authority has determined that the
32 license holder is able to practice safely. The secretary shall adopt
33 uniform rules for the evaluation by the disciplinary authority of a
34 relapse or program violation on the part of a license holder in the
35 substance abuse monitoring program. The evaluation shall encourage
36 program participation with additional conditions, in lieu of

1 disciplinary action, when the disciplinary authority determines that
2 the license holder is able to continue to practice with reasonable
3 skill and safety.

4 (2) In addition to approving substance abuse monitoring programs
5 that may receive referrals from the disciplining authority, the
6 disciplining authority may establish by rule requirements for
7 participation of license holders who are not being investigated or
8 monitored by the disciplining authority for substance abuse. License
9 holders voluntarily participating in the approved programs without
10 being referred by the disciplining authority shall not be subject to
11 disciplinary action under RCW 18.130.160 for their substance abuse, and
12 shall not have their participation made known to the disciplining
13 authority, if they meet the requirements of this section and the
14 program in which they are participating.

15 (3) The license holder shall sign a waiver allowing the program to
16 release information to the disciplining authority if the licensee does
17 not comply with the requirements of this section or is unable to
18 practice with reasonable skill or safety. The substance abuse program
19 shall report to the disciplining authority any license holder who fails
20 to comply with the requirements of this section or the program or who,
21 in the opinion of the program, is unable to practice with reasonable
22 skill or safety. License holders shall report to the disciplining
23 authority if they fail to comply with this section or do not complete
24 the program's requirements. License holders may, upon the agreement of
25 the program and disciplining authority, reenter the program if they
26 have previously failed to comply with this section.

27 (4) The treatment and pretreatment records of license holders
28 referred to or voluntarily participating in approved programs shall be
29 confidential, shall be exempt from chapter 42.56 RCW, and shall not be
30 subject to discovery by subpoena or admissible as evidence except for
31 monitoring records reported to the disciplining authority for cause as
32 defined in subsection (3) of this section. Monitoring records relating
33 to license holders referred to the program by the disciplining
34 authority or relating to license holders reported to the disciplining
35 authority by the program for cause, shall be released to the
36 disciplining authority at the request of the disciplining authority.
37 Records held by the disciplining authority under this section shall be

1 exempt from chapter 42.56 RCW and shall not be subject to discovery by
2 subpoena except by the license holder.

3 (5) "Substance abuse," as used in this section, means the
4 impairment, as determined by the disciplining authority, of a license
5 holder's professional services by an addiction to, a dependency on, or
6 the use of alcohol, legend drugs, or controlled substances.

7 (6) This section does not affect an employer's right or ability to
8 make employment-related decisions regarding a license holder. This
9 section does not restrict the authority of the disciplining authority
10 to take disciplinary action for any other unprofessional conduct.

11 (7) A person who, in good faith, reports information or takes
12 action in connection with this section is immune from civil liability
13 for reporting information or taking the action.

14 (a) The immunity from civil liability provided by this section
15 shall be liberally construed to accomplish the purposes of this section
16 and the persons entitled to immunity shall include:

- 17 (i) An approved monitoring treatment program;
- 18 (ii) The professional association operating the program;
- 19 (iii) Members, employees, or agents of the program or association;
- 20 (iv) Persons reporting a license holder as being possibly impaired
21 or providing information about the license holder's impairment; and
- 22 (v) Professionals supervising or monitoring the course of the
23 impaired license holder's treatment or rehabilitation.

24 (b) The courts are strongly encouraged to impose sanctions on
25 clients and their attorneys whose allegations under this subsection are
26 not made in good faith and are without either reasonable objective,
27 substantive grounds, or both.

28 (c) The immunity provided in this section is in addition to any
29 other immunity provided by law.

30 NEW SECTION. **Sec. 7.** A new section is added to chapter 43.43 RCW
31 to read as follows:

32 (1) Upon a guilty plea or conviction of a person for any felony
33 crime involving homicide under chapter 9A.32 RCW, assault under chapter
34 9A.36 RCW, kidnapping under chapter 9A.40 RCW, sex offenses under
35 chapter 9A.44 RCW, burglary or trespass under chapter 9A.52 RCW, theft
36 or robbery under chapter 9A.56 RCW, or fraud under chapter 9A.60 RCW

1 the prosecuting attorney shall notify the state patrol of such guilty
2 pleas or convictions.

3 (2) When the state patrol receives information that a person has
4 pled guilty to or been convicted of one of the felony crimes under
5 subsection (1) of this section, the state patrol shall transmit that
6 information to the department of health. It is the duty of the
7 department of health to identify whether the person holds a credential
8 issued by a disciplining authority listed under RCW 18.130.040, and
9 provide this information to the disciplining authority that issued the
10 credential to the person who pled guilty or was convicted of the crimes
11 committed in subsection (1) of this section.

12 NEW SECTION. **Sec. 8.** A new section is added to chapter 18.130 RCW
13 to read as follows:

14 (1) When developing its biennial budget request for appropriation
15 of the health professions account created in RCW 43.70.320, beginning
16 in the 2007-2009 budget and continuing in subsequent biennia, the
17 department shall specify the number of full-time employees designated
18 as investigators and attorneys and the costs associated with supporting
19 their activities. The department shall also specify the additional
20 full-time employees designated as investigators and attorneys that are
21 required to achieve a staffing level that is able to respond promptly,
22 competently, and appropriately to the workload associated with health
23 professions disciplinary activities and the costs associated with
24 supporting disciplinary activities. In identifying the need for
25 additional staff, the department shall develop a formula based on its
26 prior experience with staff levels compared to the number of providers,
27 complaints, investigations, and other criteria that the department
28 determines is relevant to staffing level decisions. The department
29 must request additional funds for activities that most critically
30 impact public health and safety. The budget request must specify the
31 methodology used for each biennium.

32 (2) The joint legislative audit and review committee, in
33 consultation with the department, shall report to the legislature by
34 December 1, 2010, with recommendations for formulas for determining
35 appropriate staffing levels for investigators and attorneys at the
36 department of health involved in the health professions disciplinary
37 process to achieve prompt, competent, and appropriate responses to

1 complaints of unprofessional conduct. The report must be based upon
2 the department's prior experience with staff levels compared to the
3 number of providers, complaints, investigations, and other criteria
4 that the department finds are relevant to determining appropriate
5 staffing levels.

6 (3) This section expires July 1, 2011.

7 NEW SECTION. **Sec. 9.** The following acts or parts of acts are each
8 repealed:

9 (1) RCW 18.57.174 (Duty to report unprofessional conduct--
10 Exceptions) and 2000 c 171 s 20 & 1986 c 300 s 9; and

11 (2) RCW 18.71.0193 (Duty to report unprofessional conduct--
12 Exceptions) and 1994 sp.s. c 9 s 327 & 1986 c 300 s 5.

13 NEW SECTION. **Sec. 10.** Section 6 of this act takes effect July 1,
14 2006.

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