

SENATE BILL REPORT

4SHB 1103

As Reported By Senate Committee On:
Health & Long-Term Care, February 25, 2008
Ways & Means, March 03, 2008

Title: An act relating to health professions.

Brief Description: Increasing the authority of regulators to remove health care practitioners who pose a risk to the public.

Sponsors: House Committee on Appropriations (originally sponsored by Representatives Campbell, Green, Kenney, Hudgins, Appleton, Schual-Berke and Cody).

Brief History: Passed House: 2/13/08, 97-0.

Committee Activity: Health & Long-Term Care: 2/21/08, 2/25/08 [DPA-WM].
Ways & Means: 3/03/08 [DPA].

SENATE COMMITTEE ON HEALTH & LONG-TERM CARE

Majority Report: Do pass as amended and be referred to Committee on Ways & Means.

Signed by Senators Keiser, Chair; Franklin, Vice Chair; Pflug, Ranking Minority Member; Carrell, Fairley, Kastama, Kohl-Welles, Marr and Parlette.

Staff: Edith Rice (786-7444)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: Do pass as amended.

Signed by Senators Prentice, Chair; Pridemore, Vice Chair, Operating Budget; Zarelli, Ranking Minority Member; Brandland, Fairley, Hatfield, Hobbs, Honeyford, Keiser, Kohl-Welles, Parlette, Rasmussen, Roach, Rockefeller, Schoesler and Tom.

Staff: Maria Hovde (786-7710)

Background: Health Professions Discipline. The Uniform Disciplinary Act (UDA) governs disciplinary actions for all 62 categories of credentialed health care providers. The UDA defines acts of unprofessional conduct, establishes sanctions for such acts, and provides general procedures for addressing complaints and taking disciplinary actions against a credentialed health care provider. Responsibilities in the disciplinary process are divided between the Secretary of the Department of Health (Secretary) and 14 health profession boards and commissions (collectively known as "disciplining authorities") according to the

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profession that the health care provider is a member of and the relevant step in the disciplinary process.

In August 2007 the State Auditor's Office released a performance audit of the Department of Health's (DOH) health professions regulatory system. The report included several recommendations for legislative action. Among the report's recommendations were: to provide additional tools for obtaining records, documents, and other evidence; to give the DOH the authority to access Washington State Patrol (WSP) and the Federal Bureau of Investigations (FBI) criminal background information; and requiring that national background checks be conducted on all credential holders.

Post-Conviction Credentialing. Individuals who have been convicted of a felony may not be disqualified from government employment or the practice of a profession or business that requires a license solely because of the prior conviction. There is an exception for situations in which the conviction is directly related to the employment or the profession or business at issue and less than ten years have passed.

Criminal defendants who have completed their probation may have their record of convictions vacated and be released from any penalties and disabilities that arose from the conviction. In addition, the conviction is prohibited from being disseminated or disclosed by either the WSP or local law enforcement agencies.

Summary of Bill (Recommended Amendments): Disciplinary Procedures. The authority to conduct all phases of disciplinary actions regarding cases of unprofessional conduct relating to sexual misconduct that do not involve clinical expertise or standards of practice is shifted from the individual disciplining authorities to the sole authority of the Secretary.

Credential holders who have had their credential summarily suspended or their practice restricted may request a show cause hearing before the Secretary of DOH or panel of a board or commission. The disciplining authority has the burden of demonstrating that more probable than not, the credential holder poses an immediate threat to the public health and safety.

Documents for consideration by the show cause panel or Secretary are specified.

Application Denial or Issuance with Conditions. Disciplining authorities may deny an application for a credential or issue a credential with conditions according to a process that is distinct from the standard disciplinary process for credential holders. The circumstances for which a disciplining authority may deny an application for a health care provider credential or issue the credential with conditions are where the applicant:

- has had his or her credential suspended by another jurisdiction;
- has committed an act of unprofessional conduct;
- has been convicted of, or is subject to prosecution for, a crime involving moral turpitude, certain violent crimes, a crime relating to drugs, or a crime relating to financial exploitation;
- fails to prove that he or she meets the qualifications related to the profession; or
- cannot practice with reasonable skill and safety by reason of a mental or physical condition.

The disciplining authority may require the applicant to submit to a mental, physical, or psychological examination at the applicant's expense.

Background Checks. The Secretary is authorized to receive and use criminal history information including nonconviction data for disciplinary and licensing purposes. Applicants for an initial credential to practice a health profession must receive a background check from the WSP prior to receiving the credential. Applicants are notified if their background check reveals a criminal record, and can request a copy from the department. The Secretary must conduct an annual review of a representative sample of health care providers who have previously received a background check.

The list of convictions that are cross-checked with the WSP's database is expanded to include financial crimes, drug crimes, and all felonies.

Disciplinary Sanctions. Each of the disciplining authorities must collaboratively develop a schedule to define appropriate ranges of sanctions to apply to a credentialed health care provider for acts of unprofessional conduct. The Secretary must use the recommended schedule as the basis for the adoption of emergency rules to be implemented by January 1, 2009.

A disciplining authority may order the permanent revocation of a license if it finds that the credential holder can never be rehabilitated or regain the ability to practice with reasonable skill and safety.

Reporting Unprofessional Conduct. Credential holders, corporations, organizations, health care facilities, and government agencies that employ a credentialed health care provider are required to report when they have knowledge that a credential holder or an applicant has engaged in unprofessional conduct or has information that the individual cannot practice with reasonable skill and safety due to a physical or mental condition. Failure to report this knowledge is punishable by a maximum fine of \$500.

Credentialed health care providers are required to report any arrests, convictions, and other determinations by law enforcement agencies to the appropriate disciplining authority.

Post-Conviction Credentialing. Records of criminal defendants which would otherwise be vacated and non-disclosable, are subject to distribution by the WSP or local law enforcement agencies for the purposes of health profession disciplinary activities. Protections that prevent a person from being disqualified to practice a profession for no more than ten years when that person has a prior felony conviction do not apply to health care provider credentials.

Health Profession Commission Authority. Members of health profession boards and commissions are allowed to express their opinions regarding the work of the board or commission to elected officials even if it is different from the DOH's official position. At the request of a board or commission, the Secretary must spend unappropriated funds in the Health Professions Account when revenues for the requesting board or commission exceed 15 percent of the estimated six-year spending projections. The money may only be used for the requesting board or commission for unanticipated costs for administering the profession's licensing activities.

Pilot Project. A pilot project is established involving the Medical Quality Assurance Commission (MQAC) which authorizes the commission to employ its own executive director and permit the executive director to carry out the administrative duties of the commission and, in consultation with the Secretary, to manage the DOH staff that are assigned to the

commission, subject to existing collective bargaining agreements and units. Under the pilot project, the commission is authorized to establish their own biennial budgets and develop their own performance-based expectations.

The Secretary and MQAC must submit a report to the Governor and the Legislature by December 15, 2013. The report must compare the commission's effectiveness in licensing and disciplinary activities, efficiency with respect to timeliness and personnel resources, their budgetary activity, their ability to meet specific performance measures, and a review of national research regarding regulatory effectiveness and patient safety.

EFFECT OF CHANGES MADE BY WAYS & MEANS COMMITTEE (Recommended Amendments): Eliminates the pilot projects involving the Chiropractic Quality Assurance Commission, the Nursing Care Quality Assurance Commission, and the Dental Quality Assurance Commission.

EFFECT OF CHANGES MADE BY HEALTH & LONG-TERM CARE COMMITTEE (Recommended Amendments): Boards and Commissions will review all cases initially and only transfer sexual misconduct cases to the Secretary for review, if they do not involve clinical expertise or standard of care issues.

The disciplining authority at the show cause hearing must establish that more probable than not, the license holder poses an immediate threat to the public health and safety. Documentation which can be considered at the show cause hearing is specified.

When an applicant's background check reveals a criminal record, the applicant will be notified and given the opportunity to request a copy.

The Dental Quality Assurance commission can conduct a pilot project but is not required to do so. Performance measures to be evaluated for each pilot project are specified. Staff for those commissions participating in the pilot project are employed by the DOH, and the executive director hires and manages them subject to existing collective bargaining units and agreements.

A delayed effective date is provided for the application of the uniform sanctioning schedule. The delayed effective date is removed from background checks.

Appropriation: None.

Fiscal Note: Requested.

Committee/Commission/Task Force Created: No.

Effective Date: The bill contains an emergency clause and takes effect immediately; except sections 2 and 18, relating to definitions and health care provider regulating entities, which take effect July 1, 2008; and section 12, relating to sanctioning guidelines which takes effect January 1, 2009.

Staff Summary of Public Testimony on Fourth Substitute Bill (Health & Long-Term Care): PRO: This bill has been developed over a period of four years. We support the tools it creates to better help regulate health professionals. The pilot projects will be especially helpful in addressing identified concerns. We prefer the language making them mandatory. The pilot projects will create efficiencies, keep costs down, and will encourage the boards and

commissions to work collaboratively. Greater budget autonomy will help control budget and staffing issues.

Persons Testifying (Health & Long-Term Care): PRO: Representative Campbell, prime sponsor; Len Eddinger, Tim Layton, Washington State Medical Association; Christina Hulet, Office of the Governor; Tammie Warnke, Washington State Nurses Association; Leslie Burger, Medical Quality Assurance Commission; Jennifer Norlind, Washington State Chiropractic Association; Linda Hull, Washington State Dental Association.

Staff Summary of Public Testimony (Ways & Means): None.

Persons Testifying (Ways & Means): No one.