

---

THIRD SUBSTITUTE HOUSE BILL 1103

---

State of Washington                      60th Legislature                      2008 Regular Session

By House Health Care & Wellness (originally sponsored by Representatives Campbell, Green, Kenney, Hudgins, Appleton, Schual-Berke, and Cody)

READ FIRST TIME 02/05/08.

1            AN ACT Relating to health professions; amending RCW 18.130.020,  
2 18.130.050, 18.130.060, 18.130.080, 18.130.095, 18.130.170, 18.130.310,  
3 70.41.210, 43.70.320, 18.130.140, 18.130.150, 18.130.165, 18.130.172,  
4 18.130.180, 9.96A.020, 9.95.240, and 43.43.825; reenacting and amending  
5 RCW 18.130.160, 18.130.040, and 18.130.040; adding new sections to  
6 chapter 18.130 RCW; adding a new section to chapter 42.52 RCW; creating  
7 new sections; prescribing penalties; providing effective dates; and  
8 providing an expiration date.

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

10            NEW SECTION.    **Sec. 1.** From statehood, Washington has  
11 constitutionally provided for the regulation of the practice of  
12 medicine and the sale of drugs and medicines. This constitutional  
13 recognition of the importance of regulating health care practitioners  
14 derives not from providers' financial interest in their license, but  
15 from the greater need to protect the public health and safety by  
16 assuring that the health care providers and medicines that society  
17 relies upon meet certain standards of quality.

18            The legislature finds that the issuance of a license to practice as  
19 a health care provider should be a means to ensure quality and not be

1 a means to ensure financial benefit for providers. Statutory and  
2 administrative requirements provide sufficient due process protections  
3 to prevent the unwarranted revocation of a health care provider's  
4 license. While those due process protections must be maintained, there  
5 is an urgent need to return to the original constitutional mandate that  
6 patients be ensured quality from their health care providers. The  
7 legislature has recognized and medical malpractice reforms have  
8 recognized the importance of quality and patient safety through such  
9 measures as a new adverse events reporting system. Reforms to the  
10 health care provider licensing system is another step toward improving  
11 quality in health care. Therefore, the legislature intends to increase  
12 the authority of those engaged in the regulation of health care  
13 providers to swiftly identify and remove health care providers who pose  
14 a risk to the public.

15 **Sec. 2.** RCW 18.130.020 and 1995 c 336 s 1 are each amended to read  
16 as follows:

17 (~~Unless the context clearly requires otherwise,~~) The definitions  
18 in this section apply throughout this chapter unless the context  
19 clearly requires otherwise.

20 (1) "Disciplining authority" means the agency, board, or commission  
21 having the authority to take disciplinary action against a holder of,  
22 or applicant for, a professional or business license upon a finding of  
23 a violation of this chapter or a chapter specified under RCW  
24 18.130.040.

25 (2) "Department" means the department of health.

26 (3) "Secretary" means the secretary of health or the secretary's  
27 designee.

28 (4) "Board" means any of those boards specified in RCW 18.130.040.

29 (5) "Clinical expertise" means the proficiency or judgment that a  
30 license holder in a particular profession acquires through clinical  
31 experience or clinical practice and that is not possessed by a lay  
32 person.

33 (6) "Commission" means any of the commissions specified in RCW  
34 18.130.040.

35 (~~(+6+)~~) (7) "Unlicensed practice" means:

36 (a) Practicing a profession or operating a business identified in

1 RCW 18.130.040 without holding a valid, unexpired, unrevoked, and  
2 unsuspended license to do so; or

3 (b) Representing to a consumer, through offerings, advertisements,  
4 or use of a professional title or designation, that the individual is  
5 qualified to practice a profession or operate a business identified in  
6 RCW 18.130.040, without holding a valid, unexpired, unrevoked, and  
7 unsuspended license to do so.

8 ~~((7))~~ (8) "Disciplinary action" means sanctions identified in RCW  
9 18.130.160.

10 ~~((8))~~ (9) "Practice review" means an investigative audit of  
11 records related to the complaint, without prior identification of  
12 specific patient or consumer names, or an assessment of the conditions,  
13 circumstances, and methods of the professional's practice related to  
14 the complaint, to determine whether unprofessional conduct may have  
15 been committed.

16 ~~((9))~~ (10) "Health agency" means city and county health  
17 departments and the department of health.

18 ~~((10))~~ (11) "License," "licensing," and "licensure" shall be  
19 deemed equivalent to the terms "license," "licensing," "licensure,"  
20 "certificate," "certification," and "registration" as those terms are  
21 defined in RCW 18.120.020.

22 (12) "Standards of practice" means the care, skill, and learning  
23 associated with the practice of a profession.

24 **Sec. 3.** RCW 18.130.050 and 2006 c 99 s 4 are each amended to read  
25 as follows:

26 Except as provided in section 5 of this act, the disciplining  
27 authority has the following authority:

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

30 (2) To investigate all complaints or reports of unprofessional  
31 conduct as defined in this chapter ~~((and))~~;

32 (3) To hold hearings as provided in this chapter;

33 ~~((3))~~ (4) To issue subpoenas and administer oaths in connection  
34 with any investigation, consideration of an application for license,  
35 hearing, or proceeding held under this chapter;

36 ~~((4))~~ (5) To take or cause depositions to be taken and use other

1 discovery procedures as needed in any investigation, hearing, or  
2 proceeding held under this chapter;

3 ~~((+5+))~~ (6) To compel attendance of witnesses at hearings;

4 ~~((+6+))~~ (7) In the course of investigating a complaint or report of  
5 unprofessional conduct, to conduct practice reviews and to issue  
6 citations and assess fines for failure to produce documents, records,  
7 or other items in accordance with section 20 of this act;

8 ~~((+7+))~~ (8) To take emergency action ordering summary suspension of  
9 a license, or restriction or limitation of the license holder's  
10 practice pending proceedings by the disciplining authority. Within  
11 fourteen days of a request by the affected license holder, the  
12 disciplining authority must provide a show cause hearing in accordance  
13 with the requirements of section 6 of this act. Consistent with RCW  
14 18.130.370, a disciplining authority shall issue a summary suspension  
15 of the license or temporary practice permit of a license holder  
16 prohibited from practicing a health care profession in another state,  
17 federal, or foreign jurisdiction because of an act of unprofessional  
18 conduct that is substantially equivalent to an act of unprofessional  
19 conduct prohibited by this chapter or any of the chapters specified in  
20 RCW 18.130.040. The summary suspension remains in effect until  
21 proceedings by the Washington disciplining authority have been  
22 completed;

23 ~~((+8+))~~ (9) To conduct show cause hearings in accordance with  
24 section 5 or 6 of this act to review an action taken by the  
25 disciplining authority to suspend a license or restrict or limit a  
26 license holder's practice pending proceedings by the disciplining  
27 authority;

28 (10) To use a presiding officer as authorized in RCW 18.130.095(3)  
29 or the office of administrative hearings as authorized in chapter 34.12  
30 RCW to conduct hearings. The disciplining authority shall make the  
31 final decision regarding disposition of the license unless the  
32 disciplining authority elects to delegate in writing the final decision  
33 to the presiding officer. Disciplining authorities identified in RCW  
34 18.130.040(2)(b) may not delegate the final decision regarding  
35 disposition of the license or imposition of sanctions to a presiding  
36 officer in any case pertaining to standards of practice or where  
37 clinical expertise is necessary;

1        ~~((9))~~ (11) To use individual members of the boards to direct  
2 investigations and to authorize the issuance of a citation under  
3 subsection (7) of this section. However, the member of the board shall  
4 not subsequently participate in the hearing of the case;

5        ~~((10))~~ (12) To enter into contracts for professional services  
6 determined to be necessary for adequate enforcement of this chapter;

7        ~~((11))~~ (13) To contract with ~~((licensees))~~ license holders or  
8 other persons or organizations to provide services necessary for the  
9 monitoring and supervision of ~~((licensees))~~ license holders who are  
10 placed on probation, whose professional activities are restricted, or  
11 who are for any authorized purpose subject to monitoring by the  
12 disciplining authority;

13        ~~((12))~~ (14) To adopt standards of professional conduct or  
14 practice;

15        ~~((13))~~ (15) To grant or deny license applications, and in the  
16 event of a finding of unprofessional conduct by an applicant or license  
17 holder, to impose any sanction against a license applicant or license  
18 holder provided by this chapter. After January 1, 2009, all sanctions  
19 must be issued in accordance with section 12 of this act;

20        ~~((14))~~ (16) To restrict or place conditions on the practice of  
21 new licensees in order to protect the public and promote the safety of  
22 and confidence in the health care system;

23        (17) To designate individuals authorized to sign subpoenas and  
24 statements of charges;

25        ~~((15))~~ (18) To establish panels consisting of three or more  
26 members of the board to perform any duty or authority within the  
27 board's jurisdiction under this chapter;

28        ~~((16))~~ (19) To review and audit the records of licensed health  
29 facilities' or services' quality assurance committee decisions in which  
30 a ~~((licensee's))~~ license holder's practice privilege or employment is  
31 terminated or restricted. Each health facility or service shall  
32 produce and make accessible to the disciplining authority the  
33 appropriate records and otherwise facilitate the review and audit.  
34 Information so gained shall not be subject to discovery or introduction  
35 into evidence in any civil action pursuant to RCW 70.41.200(3).

36        **Sec. 4.** RCW 18.130.060 and 2006 c 99 s 1 are each amended to read  
37 as follows:

1 In addition to the authority specified in RCW 18.130.050 and  
2 section 5 of this act, the secretary has the following additional  
3 authority:

4 (1) To employ such investigative, administrative, and clerical  
5 staff as necessary for the enforcement of this chapter. The secretary  
6 must, whenever practical, make primary assignments on a long-term basis  
7 to foster the development and maintenance of staff expertise. To  
8 ensure continuity and best practices, the secretary will regularly  
9 evaluate staff assignments and workload distribution;

10 (2) Upon the request of a board or commission, to appoint pro tem  
11 members to participate as members of a panel of the board or commission  
12 in connection with proceedings specifically identified in the request.  
13 Individuals so appointed must meet the same minimum qualifications as  
14 regular members of the board or commission. Pro tem members appointed  
15 for matters under this chapter are appointed for a term of no more than  
16 one year. No pro tem member may serve more than four one-year terms.  
17 While serving as board or commission members pro tem, persons so  
18 appointed have all the powers, duties, and immunities, and are entitled  
19 to the emoluments, including travel expenses in accordance with RCW  
20 43.03.050 and 43.03.060, of regular members of the board or commission.  
21 The chairperson of a panel shall be a regular member of the board or  
22 commission appointed by the board or commission chairperson. Panels  
23 have authority to act as directed by the board or commission with  
24 respect to all matters (~~concerning the review, investigation, and~~  
25 ~~adjudication of all complaints, allegations, charges, and matters~~)  
26 subject to the jurisdiction of the board or commission and within the  
27 authority of the board or commission. The authority to act through  
28 panels does not restrict the authority of the board or commission to  
29 act as a single body at any phase of proceedings within the board's or  
30 commission's jurisdiction. Board or commission panels may (~~make~~  
31 ~~interim orders and~~) issue final orders and decisions with respect to  
32 matters and cases delegated to the panel by the board or commission.  
33 Final decisions may be appealed as provided in chapter 34.05 RCW, the  
34 administrative procedure act;

35 (3) To establish fees to be paid for witnesses, expert witnesses,  
36 and consultants used in any investigation and to establish fees to  
37 witnesses in any agency adjudicative proceeding as authorized by RCW  
38 34.05.446;

1 (4) To conduct investigations and practice reviews at the direction  
2 of the disciplining authority and to issue subpoenas, administer oaths,  
3 and take depositions in the course of conducting those investigations  
4 and practice reviews at the direction of the disciplining authority;

5 (5) To have the health professions regulatory program establish a  
6 system to recruit potential public members, to review the  
7 qualifications of such potential members, and to provide orientation to  
8 those public members appointed pursuant to law by the governor or the  
9 secretary to the boards and commissions specified in RCW  
10 18.130.040(2)(b), and to the advisory committees and councils for  
11 professions specified in RCW 18.130.040(2)(a); and

12 (6) To adopt rules, in consultation with the disciplining  
13 authorities, requiring every license holder to report information  
14 identified in RCW 18.130.070.

15 NEW SECTION. **Sec. 5.** A new section is added to chapter 18.130 RCW  
16 to read as follows:

17 (1)(a) With regard to complaints that only allege that a license  
18 holder has committed an act or acts of unprofessional conduct involving  
19 sexual misconduct, the secretary shall serve as the sole disciplining  
20 authority in every aspect of the disciplinary process, including  
21 initiating investigations, investigating, determining the disposition  
22 of the complaint, holding hearings, preparing findings of fact, issuing  
23 orders or dismissals of charges as provided in RCW 18.130.110, entering  
24 into stipulations permitted by RCW 18.130.172, or issuing summary  
25 suspensions under section 6 of this act.

26 (b) The provisions of (a) of this subsection only apply to cases in  
27 which the act or acts of sexual misconduct do not also involve issues  
28 of clinical expertise or standards of practice.

29 (2)(a) Within seventy-two hours of receiving a complaint related to  
30 a license holder that is regulated by a board or commission identified  
31 in RCW 18.130.040(2)(b) and that only alleges acts of sexual  
32 misconduct, the secretary shall send the complaint and any other  
33 information that may be available related to the complaint or a  
34 preliminary investigation of the complaint to the board or commission  
35 responsible for the discipline of the license holder named in the  
36 complaint. If, upon review of the complaint and other information  
37 received from the secretary, the board or commission determines that

1 the case involves issues of clinical expertise or standards of  
2 practice, then the case, upon notice to the secretary, must be  
3 transferred to and become the responsibility of that board or  
4 commission under its authority under RCW 18.130.050 as a disciplining  
5 authority. Within seventy-two hours of receipt of a complaint from the  
6 secretary, the board or commission must identify whether the complaint  
7 should be transferred.

8 (b) The secretary's staff that participate in making an initial  
9 determination that a complaint alleges acts involving sexual misconduct  
10 that does not include issues of clinical expertise or standards of  
11 practice may not participate in the review of that determination  
12 conducted by the board or commission under (a) of this subsection.

13 NEW SECTION. **Sec. 6.** A new section is added to chapter 18.130 RCW  
14 to read as follows:

15 (1) Upon an order of a disciplining authority to summarily suspend  
16 a license, or restrict or limit a license holder's practice pursuant to  
17 RCW 18.130.050 or section 5 of this act, the license holder is entitled  
18 to a show cause hearing before a panel or health law judge identified  
19 in subsection (2) of this section within fourteen days of requesting a  
20 show cause hearing. The license holder must request the show cause  
21 hearing within twenty-one days of the issuance of the order. At the  
22 show cause hearing, the disciplining authority has the burden of  
23 demonstrating that the license holder poses an immediate threat to the  
24 public health and safety. The license holder must request a hearing  
25 regarding the statement of charges in accordance with RCW 18.130.090.

26 (2)(a) In the case of a license holder who is regulated by a board  
27 or commission identified in RCW 18.130.040(2)(b), the show cause  
28 hearing must be held by a panel of the appropriate board or commission.

29 (b) In the case of a license holder who is regulated by the  
30 secretary under RCW 18.130.040(2)(a), the show cause hearing must be  
31 held by a health law judge.

32 (3) At the show cause hearing, the show cause hearing panel or  
33 health law judge may consider all evidence and shall provide the  
34 license holder with an opportunity to provide testimony and be  
35 represented by legal counsel.

36 (4)(a) If the show cause hearing panel or health law judge



1 determines that the license holder does not pose an immediate threat to  
2 the public health and safety, the panel or health law judge may  
3 overturn the summary suspension or restriction order.

4 (b) If the show cause hearing panel or health law judge determines  
5 that the license holder poses an immediate threat to the public health  
6 and safety, the summary suspension or restriction order shall remain in  
7 effect. The show cause hearing panel or health law judge may amend the  
8 order as long as the amended order ensures that the license holder will  
9 no longer pose an immediate threat to the public health and safety.

10 (5) Within forty-five days of the show cause hearing panel's  
11 determination to sustain the summary suspension or place restrictions  
12 on the license, the license holder may request a full hearing on the  
13 merits of the disciplining authority's decision to suspend or restrict  
14 the license. A full hearing must be provided within forty-five days of  
15 receipt of the request for a hearing, unless stipulated otherwise.

16 NEW SECTION. **Sec. 7.** A new section is added to chapter 18.130 RCW  
17 to read as follows:

18 (1)(a) The secretary is authorized to receive criminal history  
19 record information that includes nonconviction data for any purpose  
20 associated with investigation or licensing and investigate the complete  
21 criminal history and pending charges of all applicants and license  
22 holders.

23 (b) Dissemination or use of nonconviction data for purposes other  
24 than that authorized in this section is prohibited. Disciplining  
25 authorities shall restrict the use of background check results in  
26 determining the individual's suitability for a license and in  
27 conducting disciplinary functions.

28 (2)(a) The secretary shall establish requirements for each  
29 applicant for an initial license to obtain a state background check  
30 through the state patrol prior to the issuance of any license. The  
31 background check may be fingerprint-based at the discretion of the  
32 department.

33 (b) The secretary shall specify those situations where a background  
34 check under (a) of this subsection is inadequate and an applicant for  
35 an initial license must obtain an electronic fingerprint-based national  
36 background check through the state patrol and federal bureau of  
37 investigation. Situations where a background check is inadequate may

1 include instances where an applicant has recently lived out of state or  
2 where the applicant has a criminal record in Washington. The secretary  
3 shall issue a temporary practice permit to an applicant who must have  
4 a national background check conducted if the background check conducted  
5 under (a) of this subsection does not reveal a criminal record in  
6 Washington, and if the applicant meets the provisions of RCW  
7 18.130.075.

8 (3) In addition to the background check required in subsection (2)  
9 of this section, an investigation may include an examination of state  
10 and national criminal identification data. The disciplining authority  
11 shall use the information for determining eligibility for licensure or  
12 renewal. The disciplining authority may also use the information when  
13 determining whether to proceed with an investigation of a report under  
14 RCW 18.130.080. For a national criminal history records check, the  
15 department shall require fingerprints be submitted to and searched  
16 through the Washington state patrol identification and criminal history  
17 section. The Washington state patrol shall forward the fingerprints to  
18 the federal bureau of investigation.

19 (4) The secretary shall adopt rules to require license holders to  
20 report to the disciplining authority any arrests, convictions, or other  
21 determinations or findings by a law enforcement agency occurring after  
22 the effective date of this section for a criminal offense. The report  
23 must be made within fourteen days of the conviction.

24 (5) The secretary shall conduct an annual review of a  
25 representative sample of all license holders who have previously  
26 obtained a background check through the department. The selection of  
27 the license holders to be reviewed must be representative of all  
28 categories of license holders and geographic locations.

29 (6)(a) When deciding whether or not to issue an initial license,  
30 the disciplining authority shall consider the results of any background  
31 check conducted under subsection (2) of this section that reveals a  
32 conviction for any criminal offense that constitutes unprofessional  
33 conduct under this chapter or the chapters specified in RCW  
34 18.130.040(2) or a series of arrests that when considered together  
35 demonstrate a pattern of behavior that, without investigation, may pose  
36 a risk to the safety of the license holder's patients.

37 (b) If the background check conducted under subsection (2) of this  
38 section reveals any information related to unprofessional conduct that

1 has not been previously disclosed to the disciplining authority, the  
2 disciplining authority shall take appropriate disciplinary action  
3 against the license holder.

4 (7) The department shall:

5 (a) Require the applicant or license holder to submit full sets of  
6 fingerprints if necessary to complete the background check;

7 (b) Require the applicant to submit any information required by the  
8 state patrol; and

9 (c) Notify the applicant of the results of the background check.  
10 If any background check reveals a criminal record, the department shall  
11 send the applicant a copy of the record upon request.

12 (8) Criminal justice agencies shall provide the secretary with both  
13 conviction and nonconviction information that the secretary requests  
14 for investigations under this chapter.

15 (9) There is established a unit within the department for the  
16 purpose of detection, investigation, and prosecution of any act  
17 prohibited or declared unlawful under this chapter. The secretary will  
18 employ supervisory, legal, and investigative personnel for the unit who  
19 must be qualified by training and experience.

20 **Sec. 8.** RCW 18.130.080 and 2006 c 99 s 5 are each amended to read  
21 as follows:

22 (1) (~~(A person, including but not limited to consumers, licensees,~~  
23 ~~corporations, organizations, health care facilities, impaired~~  
24 ~~practitioner programs, or voluntary substance abuse monitoring programs~~  
25 ~~approved by disciplining authorities, and state and local governmental~~  
26 ~~agencies,)) (a) An individual, an impaired practitioner program, or a  
27 voluntary substance abuse monitoring program approved by a disciplining  
28 authority, may submit a written complaint to the disciplining authority  
29 charging a license holder or applicant with unprofessional conduct and  
30 specifying the grounds therefor or to report information to the  
31 disciplining authority, or voluntary substance abuse monitoring  
32 program, or an impaired practitioner program approved by the  
33 disciplining authority, which indicates that the license holder may not  
34 be able to practice his or her profession with reasonable skill and  
35 safety to consumers as a result of a mental or physical condition.~~

36 (b)(i) Every license holder, corporation, organization, health care  
37 facility, and state and local governmental agency that employs a

1 license holder shall report to the disciplining authority when any  
2 license holder's services have been terminated or restricted based upon  
3 a final determination that the license holder has either committed an  
4 act or acts that may constitute unprofessional conduct or that the  
5 license holder may not be able to practice his or her profession with  
6 reasonable skill and safety to consumers as a result of a mental or  
7 physical condition.

8 (ii) All reports required by (b)(i) of this subsection must be  
9 submitted to the disciplining authority as soon as possible, but no  
10 later than twenty days after a determination has been made. A report  
11 should contain the following information, if known:

12 (A) The name, address, and telephone number of the person making  
13 the report;

14 (B) The name, address, and telephone number of the license holder  
15 being reported;

16 (C) The case number of any patient whose treatment is the subject  
17 of the report;

18 (D) A brief description or summary of the facts that gave rise to  
19 the issuance of the report, including dates of occurrences;

20 (E) If court action is involved, the name of the court in which the  
21 action is filed, the date of filing, and the docket number; and

22 (F) Any further information that would aid in the evaluation of the  
23 report.

24 (iii) Mandatory reports required by (b)(i) of this subsection are  
25 exempt from public inspection and copying to the extent permitted under  
26 chapter 42.56 RCW or to the extent that public inspection or copying of  
27 the report would invade or violate a person's right to privacy as set  
28 forth in RCW 42.56.050.

29 (2) If the disciplining authority determines that ((the)) a  
30 complaint submitted under subsection (1) of this section merits  
31 investigation, or if the disciplining authority has reason to believe,  
32 without a formal complaint, that a license holder or applicant may have  
33 engaged in unprofessional conduct, the disciplining authority shall  
34 investigate to determine whether there has been unprofessional conduct.  
35 In determining whether or not to investigate, the disciplining  
36 authority shall consider any prior complaints received by the  
37 disciplining authority, any prior findings of fact under RCW

1 18.130.110, any stipulations to informal disposition under RCW  
2 18.130.172, and any comparable action taken by other state disciplining  
3 authorities.

4 ~~((2))~~ (3) Notwithstanding subsection ~~((1))~~ (2) of this section,  
5 the disciplining authority shall initiate an investigation in every  
6 instance where:

7 (a) The disciplining authority receives information that a health  
8 care provider has been disqualified from participating in the federal  
9 medicare program, under Title XVIII of the federal social security act,  
10 or the federal medicaid program, under Title XIX of the federal social  
11 security act; or

12 (b) There is a pattern of complaints, arrests, or other actions  
13 that may not have resulted in a formal adjudication of wrongdoing, but  
14 when considered together demonstrate a pattern of similar conduct that,  
15 without investigation, likely poses a risk to the safety of the license  
16 holder's patients.

17 (4) Failure of a license holder to submit a mandatory report to the  
18 disciplining authority under subsection (1)(b) of this section is  
19 punishable by a civil penalty not to exceed five hundred dollars and  
20 constitutes unprofessional conduct.

21 (5) If a report has been made by a hospital to the department under  
22 RCW 70.41.210 or an ambulatory surgical facility under RCW 70.230.120,  
23 a report to the disciplining authority under subsection (1)(b) of this  
24 section is not required.

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

28 (6) A person is immune from civil liability, whether direct or  
29 derivative, for providing information in good faith to the disciplining  
30 authority under this section.

31 (7)(a) The secretary is authorized to receive criminal history  
32 record information that includes nonconviction data for any purpose  
33 associated with the investigation or licensing of persons under this  
34 chapter.

35 (b) Dissemination or use of nonconviction data for purposes other  
36 than that authorized in this section is prohibited.

1       **Sec. 9.** RCW 18.130.095 and 2005 c 274 s 231 are each amended to  
2 read as follows:

3       (1)(a) The secretary, in consultation with the disciplining  
4 authorities, shall develop uniform procedural rules to respond to  
5 public inquiries concerning complaints and their disposition, active  
6 investigations, statement of charges, findings of fact, and final  
7 orders involving a ((~~licensee~~)) license holder, applicant, or  
8 unlicensed person. The uniform procedural rules adopted under this  
9 subsection apply to all adjudicative proceedings conducted under this  
10 chapter and shall include provisions for establishing time periods for  
11 initial assessment, investigation, charging, discovery, settlement, and  
12 adjudication of complaints, and shall include enforcement provisions  
13 for violations of the specific time periods by the department, the  
14 disciplining authority, and the respondent. A ((~~licensee~~)) license  
15 holder must be notified upon receipt of a complaint, except when the  
16 notification would impede an effective investigation. At the earliest  
17 point of time the ((~~licensee~~)) license holder must be allowed to submit  
18 a written statement about that complaint, which statement must be  
19 included in the file. Complaints filed after July 27, 1997, are exempt  
20 from public disclosure under chapter 42.56 RCW until the complaint has  
21 been initially assessed and determined to warrant an investigation by  
22 the disciplining authority. Complaints determined not to warrant an  
23 investigation by the disciplining authority are no longer considered  
24 complaints, but must remain in the records and tracking system of the  
25 department. Information about complaints that did not warrant an  
26 investigation, including the existence of the complaint, may be  
27 released only upon receipt of a written public disclosure request or  
28 pursuant to an interagency agreement as provided in (b) of this  
29 subsection. Complaints determined to warrant no cause for action after  
30 investigation are subject to public disclosure, must include an  
31 explanation of the determination to close the complaint, and must  
32 remain in the records and tracking system of the department.

33       (b) The secretary, on behalf of the disciplining authorities, shall  
34 enter into interagency agreements for the exchange of records, which  
35 may include complaints filed but not yet assessed, with other state  
36 agencies if access to the records will assist those agencies in meeting  
37 their federal or state statutory responsibilities. Records obtained by

1 state agencies under the interagency agreements are subject to the  
2 limitations on disclosure contained in (a) of this subsection.

3 (2) The uniform procedures for conducting investigations shall  
4 provide that prior to taking a written statement:

5 (a) For violation of this chapter, the investigator shall inform  
6 such person, in writing of: (i) The nature of the complaint; (ii) that  
7 the person may consult with legal counsel at his or her expense prior  
8 to making a statement; and (iii) that any statement that the person  
9 makes may be used in an adjudicative proceeding conducted under this  
10 chapter; and

11 (b) From a witness or potential witness in an investigation under  
12 this chapter, the investigator shall inform the person, in writing,  
13 that the statement may be released to the (~~licensee~~) license holder,  
14 applicant, or unlicensed person under investigation if a statement of  
15 charges is issued.

16 (3) Only upon the authorization of a disciplining authority  
17 identified in RCW 18.130.040(2)(b), the secretary, or his or her  
18 designee, may serve as the presiding officer for any disciplinary  
19 proceedings of the disciplining authority authorized under this  
20 chapter, except in cases pertaining to standards of practice or where  
21 clinical expertise is necessary. Except as provided in RCW  
22 18.130.050(~~(+8)~~) (10), the presiding officer shall not vote on or make  
23 any final decision. All functions performed by the presiding officer  
24 shall be subject to chapter 34.05 RCW. The secretary, in consultation  
25 with the disciplining authorities, shall adopt procedures for  
26 implementing this subsection.

27 (4) The uniform procedural rules shall be adopted by all  
28 disciplining authorities listed in RCW 18.130.040(2), and shall be used  
29 for all adjudicative proceedings conducted under this chapter, as  
30 defined by chapter 34.05 RCW. The uniform procedural rules shall  
31 address the use of a presiding officer authorized in subsection (3) of  
32 this section to determine and issue decisions on all legal issues and  
33 motions arising during adjudicative proceedings.

34 **Sec. 10.** RCW 18.130.160 and 2006 c 99 s 6 and 2006 c 8 s 104 are  
35 each reenacted and amended to read as follows:

36 Upon a finding, after hearing, that a license holder (~~or~~  
37 ~~applicant~~) has committed unprofessional conduct or is unable to

1 practice with reasonable skill and safety due to a physical or mental  
2 condition, the disciplining authority (~~(may consider the imposition of~~  
3 ~~sanctions, taking into account)~~) shall issue an order including  
4 sanctions adopted in accordance with the schedule adopted under section  
5 12 of this act giving proper consideration to any prior findings of  
6 fact under RCW 18.130.110, any stipulations to informal disposition  
7 under RCW 18.130.172, and any action taken by other in-state or out-of-  
8 state disciplining authorities(~~(, and issue an)~~). The order  
9 (~~(providing)~~) must provide for one or any combination of the following,  
10 as directed by the schedule:

- 11 (1) Revocation of the license;
- 12 (2) Suspension of the license for a fixed or indefinite term;
- 13 (3) Restriction or limitation of the practice;
- 14 (4) Requiring the satisfactory completion of a specific program of  
15 remedial education or treatment;
- 16 (5) The monitoring of the practice by a supervisor approved by the  
17 disciplining authority;
- 18 (6) Censure or reprimand;
- 19 (7) Compliance with conditions of probation for a designated period  
20 of time;
- 21 (8) Payment of a fine for each violation of this chapter, not to  
22 exceed five thousand dollars per violation. Funds received shall be  
23 placed in the health professions account;
- 24 (9) Denial of the license request;
- 25 (10) Corrective action;
- 26 (11) Refund of fees billed to and collected from the consumer;
- 27 (12) A surrender of the practitioner's license in lieu of other  
28 sanctions, which must be reported to the federal data bank.

29 Any of the actions under this section may be totally or partly  
30 stayed by the disciplining authority. Safeguarding the public's health  
31 and safety is the paramount responsibility of every disciplining  
32 authority (~~(and)~~). In determining what action is appropriate, the  
33 disciplining authority must consider the schedule adopted under section  
34 12 of this act. Where the schedule allows flexibility in determining  
35 the appropriate sanction, the disciplining authority must first  
36 consider what sanctions are necessary to protect or compensate the  
37 public. Only after such provisions have been made may the disciplining  
38 authority consider and include in the order requirements designed to



1 rehabilitate the license holder (~~(or applicant)~~). All costs associated  
2 with compliance with orders issued under this section are the  
3 obligation of the license holder (~~(or applicant)~~). The disciplining  
4 authority may order permanent revocation of a license if it finds that  
5 the license holder can never be rehabilitated or can never regain the  
6 ability to practice with reasonable skill and safety.

7 Surrender or permanent revocation of a license under this section  
8 is not subject to a petition for reinstatement under RCW 18.130.150.

9 The disciplining authority may determine that a case presents  
10 unique circumstances that the schedule adopted under section 12 of this  
11 act does not adequately address. The disciplining authority may  
12 deviate from the schedule adopted under section 12 of this act when  
13 selecting appropriate sanctions, but the disciplining authority must  
14 issue a written explanation of the basis for not following the  
15 schedule.

16 The (~~(licensee or applicant)~~) license holder may enter into a  
17 stipulated disposition of charges that includes one or more of the  
18 sanctions of this section, but only after a statement of charges has  
19 been issued and the (~~(licensee)~~) license holder has been afforded the  
20 opportunity for a hearing and has elected on the record to forego such  
21 a hearing. The stipulation shall either contain one or more specific  
22 findings of unprofessional conduct or inability to practice, or a  
23 statement by the (~~(licensee)~~) license holder acknowledging that  
24 evidence is sufficient to justify one or more specified findings of  
25 unprofessional conduct or inability to practice. The stipulation  
26 entered into pursuant to this subsection shall be considered formal  
27 disciplinary action for all purposes.

28 **Sec. 11.** RCW 18.130.170 and 1995 c 336 s 8 are each amended to  
29 read as follows:

30 (1) If the disciplining authority believes a license holder (~~(or~~  
31 ~~applicant)~~) may be unable to practice with reasonable skill and safety  
32 to consumers by reason of any mental or physical condition, a statement  
33 of charges in the name of the disciplining authority shall be served on  
34 the license holder (~~(or applicant)~~) and notice shall also be issued  
35 providing an opportunity for a hearing. The hearing shall be limited  
36 to the sole issue of the capacity of the license holder (~~(or~~  
37 ~~applicant)~~) to practice with reasonable skill and safety. If the

1 disciplining authority determines that the license holder (~~or~~  
2 ~~applicant~~) is unable to practice with reasonable skill and safety for  
3 one of the reasons stated in this subsection, the disciplining  
4 authority shall impose such sanctions under RCW 18.130.160 as is deemed  
5 necessary to protect the public.

6 (2)(a) In investigating or adjudicating a complaint or report that  
7 a license holder (~~or applicant~~) may be unable to practice with  
8 reasonable skill or safety by reason of any mental or physical  
9 condition, the disciplining authority may require a license holder (~~or~~  
10 ~~applicant~~) to submit to a mental or physical examination by one or  
11 more licensed or certified health professionals designated by the  
12 disciplining authority. The license holder (~~or applicant~~) shall be  
13 provided written notice of the disciplining authority's intent to order  
14 a mental or physical examination, which notice shall include: (i) A  
15 statement of the specific conduct, event, or circumstances justifying  
16 an examination; (ii) a summary of the evidence supporting the  
17 disciplining authority's concern that the license holder (~~or~~  
18 ~~applicant~~) may be unable to practice with reasonable skill and safety  
19 by reason of a mental or physical condition, and the grounds for  
20 believing such evidence to be credible and reliable; (iii) a statement  
21 of the nature, purpose, scope, and content of the intended examination;  
22 (iv) a statement that the license holder (~~or applicant~~) has the right  
23 to respond in writing within twenty days to challenge the disciplining  
24 authority's grounds for ordering an examination or to challenge the  
25 manner or form of the examination; and (v) a statement that if the  
26 license holder (~~or applicant~~) timely responds to the notice of  
27 intent, then the license holder (~~or applicant~~) will not be required  
28 to submit to the examination while the response is under consideration.

29 (b) Upon submission of a timely response to the notice of intent to  
30 order a mental or physical examination, the license holder (~~or~~  
31 ~~applicant~~) shall have an opportunity to respond to or refute such an  
32 order by submission of evidence or written argument or both. The  
33 evidence and written argument supporting and opposing the mental or  
34 physical examination shall be reviewed by either a panel of the  
35 disciplining authority members who have not been involved with the  
36 allegations against the license holder (~~or applicant~~) or a neutral  
37 decision maker approved by the disciplining authority. The reviewing  
38 panel of the disciplining authority or the approved neutral decision

1 maker may, in its discretion, ask for oral argument from the parties.  
2 The reviewing panel of the disciplining authority or the approved  
3 neutral decision maker shall prepare a written decision as to whether:  
4 There is reasonable cause to believe that the license holder (~~(or~~  
5 ~~applicant)~~) may be unable to practice with reasonable skill and safety  
6 by reason of a mental or physical condition, or the manner or form of  
7 the mental or physical examination is appropriate, or both.

8 (c) Upon receipt by the disciplining authority of the written  
9 decision, or upon the failure of the license holder (~~(or applicant)~~) to  
10 timely respond to the notice of intent, the disciplining authority may  
11 issue an order requiring the license holder (~~(or applicant)~~) to undergo  
12 a mental or physical examination. All such mental or physical  
13 examinations shall be narrowly tailored to address only the alleged  
14 mental or physical condition and the ability of the license holder (~~(or~~  
15 ~~applicant)~~) to practice with reasonable skill and safety. An order of  
16 the disciplining authority requiring the license holder (~~(or~~  
17 ~~applicant)~~) to undergo a mental or physical examination is not a final  
18 order for purposes of appeal. The cost of the examinations ordered by  
19 the disciplining authority shall be paid out of the health professions  
20 account. In addition to any examinations ordered by the disciplining  
21 authority, the (~~(licensee)~~) license holder may submit physical or  
22 mental examination reports from licensed or certified health  
23 professionals of the license holder's (~~(or applicant's)~~) choosing and  
24 expense.

25 (d) If the disciplining authority finds that a license holder (~~(or~~  
26 ~~applicant)~~) has failed to submit to a properly ordered mental or  
27 physical examination, then the disciplining authority may order  
28 appropriate action or discipline under RCW 18.130.180(9), unless the  
29 failure was due to circumstances beyond the person's control. However,  
30 no such action or discipline may be imposed unless the license holder  
31 (~~(or applicant)~~) has had the notice and opportunity to challenge the  
32 disciplining authority's grounds for ordering the examination, to  
33 challenge the manner and form, to assert any other defenses, and to  
34 have such challenges or defenses considered by either a panel of the  
35 disciplining authority members who have not been involved with the  
36 allegations against the license holder (~~(or applicant)~~) or a neutral  
37 decision maker approved by the disciplining authority, as previously  
38 set forth in this section. Further, the action or discipline ordered

1 by the disciplining authority shall not be more severe than a  
2 suspension of the license, certification, registration, or application  
3 until such time as the license holder (~~(or applicant)~~) complies with  
4 the properly ordered mental or physical examination.

5 (e) Nothing in this section shall restrict the power of (~~a~~  
6 ~~disciplining authority~~) the secretary to act in an emergency under RCW  
7 34.05.422(4), 34.05.479, and 18.130.050(~~(+7)~~) (8).

8 (f) A determination by a court of competent jurisdiction that a  
9 license holder (~~(or applicant)~~) is mentally incompetent or (~~(mentally~~  
10 ~~ill)~~) an individual with mental illness is presumptive evidence of the  
11 license holder's (~~(or applicant's)~~) inability to practice with  
12 reasonable skill and safety. An individual affected under this section  
13 shall at reasonable intervals be afforded an opportunity, at his or her  
14 expense, to demonstrate that the individual can resume competent  
15 practice with reasonable skill and safety to the consumer.

16 (3) For the purpose of subsection (2) of this section, (~~an~~  
17 ~~applicant or~~) a license holder governed by this chapter, by making  
18 application, practicing, or filing a license renewal, is deemed to have  
19 given consent to submit to a mental, physical, or psychological  
20 examination when directed in writing by the disciplining authority and  
21 further to have waived all objections to the admissibility or use of  
22 the examining health professional's testimony or examination reports by  
23 the disciplining authority on the ground that the testimony or reports  
24 constitute privileged communications.

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

27 (1) Each of the disciplining authorities identified in RCW  
28 18.130.040(2)(b) shall appoint a representative to review the  
29 secretary's sanctioning guidelines, as well as guidelines adopted by  
30 any of the boards and commissions, and collaborate to develop a  
31 schedule that defines appropriate ranges of sanctions that are  
32 applicable upon a determination that a license holder has committed  
33 unprofessional conduct as defined in this chapter or the chapters  
34 specified in RCW 18.130.040(2). The schedule must identify aggravating  
35 and mitigating circumstances that may enhance or reduce the sanction  
36 imposed by the disciplining authority for unprofessional conduct. The  
37 schedule must apply to all disciplining authorities. In addition, the

1 disciplining authorities shall make provisions for instances in which  
2 there are multiple findings of unprofessional conduct. When  
3 establishing the proposed schedule, the disciplining authorities shall  
4 consider maintaining consistent sanction determinations that maximize  
5 the protection of the public's health and while maintaining the rights  
6 of health care providers of the different health professions. The  
7 disciplining authorities shall submit the proposed schedule and  
8 recommendations to modify or adopt the secretary's guidelines to the  
9 secretary no later than November 15, 2008.

10 (2) The secretary shall adopt rules establishing a uniform  
11 sanctioning schedule that is consistent with the proposed schedule  
12 developed under subsection (1) of this section. The schedule shall be  
13 applied to all disciplinary actions commenced under this chapter after  
14 January 1, 2009. The secretary shall use his or her emergency  
15 rule-making authority pursuant to the procedures under chapter 34.05  
16 RCW, to adopt rules that take effect no later than January 1, 2009, to  
17 implement the schedule.

18 (3) The disciplining authority may determine that a case presents  
19 unique circumstances that the schedule adopted under this section does  
20 not adequately address. The disciplining authority may deviate from  
21 the schedule adopted under this section when selecting appropriate  
22 sanctions, but the disciplining authority must issue a written  
23 explanation in the order of the basis for not following the schedule.

24 (4) The secretary shall report to the legislature by January 15,  
25 2009, on the adoption of the sanctioning schedule.

26 **Sec. 13.** RCW 18.130.310 and 1989 1st ex.s. c 9 s 313 are each  
27 amended to read as follows:

28 (1) Subject to RCW 40.07.040, the disciplinary authority shall  
29 submit ((a biennial)) an annual report to the legislature on its  
30 proceedings during the ((biennium)) year, detailing the number of  
31 complaints made, investigated, and adjudicated and manner of  
32 disposition. In addition, the report must provide data on the  
33 department's background check activities conducted under section 7 of  
34 this act and the effectiveness of those activities in identifying  
35 potential license holders who may not be qualified to practice safely.  
36 The report must summarize the distribution of the number of cases  
37 assigned to each attorney and investigator for each profession. The

1 identity of the attorney and investigator must remain anonymous. The  
2 report may include recommendations for improving the disciplinary  
3 process, including proposed legislation. The department shall develop  
4 a uniform report format.

5 (2) Each disciplining authority identified in RCW 18.130.040(2)(b)  
6 may submit an annual report to complement the report required under  
7 subsection (1) of this section. Each report may provide additional  
8 information about the disciplinary activities, rule-making and policy  
9 activities, and receipts and expenditures for the individual  
10 disciplining authority.

11 **Sec. 14.** RCW 70.41.210 and 2005 c 470 s 1 are each amended to read  
12 as follows:

13 (1) The chief administrator or executive officer of a hospital  
14 shall report to the department when the practice of a health care  
15 practitioner as defined in subsection (2) of this section is  
16 restricted, suspended, limited, or terminated based upon a conviction,  
17 determination, or finding by the hospital that the health care  
18 practitioner has committed an action defined as unprofessional conduct  
19 under RCW 18.130.180. The chief administrator or executive officer  
20 shall also report any voluntary restriction or termination of the  
21 practice of a health care practitioner as defined in subsection (2) of  
22 this section while the practitioner is under investigation or the  
23 subject of a proceeding by the hospital regarding unprofessional  
24 conduct, or in return for the hospital not conducting such an  
25 investigation or proceeding or not taking action. The department will  
26 forward the report to the appropriate disciplining authority.

27 (2) The reporting requirements apply to the following health care  
28 practitioners: Pharmacists as defined in chapter 18.64 RCW; advanced  
29 registered nurse practitioners as defined in chapter 18.79 RCW;  
30 dentists as defined in chapter 18.32 RCW; naturopaths as defined in  
31 chapter 18.36A RCW; optometrists as defined in chapter 18.53 RCW;  
32 osteopathic physicians and surgeons as defined in chapter 18.57 RCW;  
33 osteopathic ((~~physician~~—[~~physicians~~'])) physicians' assistants as  
34 defined in chapter 18.57A RCW; physicians as defined in chapter 18.71  
35 RCW; physician assistants as defined in chapter 18.71A RCW; podiatric  
36 physicians and surgeons as defined in chapter 18.22 RCW; and  
37 psychologists as defined in chapter 18.83 RCW.

1 (3) Reports made under subsection (1) of this section shall be made  
2 within fifteen days of the date: (a) A conviction, determination, or  
3 finding is made by the hospital that the health care practitioner has  
4 committed an action defined as unprofessional conduct under RCW  
5 18.130.180; or (b) the voluntary restriction or termination of the  
6 practice of a health care practitioner, including his or her voluntary  
7 resignation, while under investigation or the subject of proceedings  
8 regarding unprofessional conduct under RCW 18.130.180 is accepted by  
9 the hospital.

10 (4) Failure of a hospital to comply with this section is punishable  
11 by a civil penalty not to exceed (~~two~~) five hundred (~~fifty~~)  
12 dollars.

13 (5) A hospital, its chief administrator, or its executive officer  
14 who files a report under this section is immune from suit, whether  
15 direct or derivative, in any civil action related to the filing or  
16 contents of the report, unless the conviction, determination, or  
17 finding on which the report and its content are based is proven to not  
18 have been made in good faith. The prevailing party in any action  
19 brought alleging the conviction, determination, finding, or report was  
20 not made in good faith, shall be entitled to recover the costs of  
21 litigation, including reasonable attorneys' fees.

22 (6) The department shall forward reports made under subsection (1)  
23 of this section to the appropriate disciplining authority designated  
24 under Title 18 RCW within fifteen days of the date the report is  
25 received by the department. The department shall notify a hospital  
26 that has made a report under subsection (1) of this section of the  
27 results of the disciplining authority's case disposition decision  
28 within fifteen days after the case disposition. Case disposition is  
29 the decision whether to issue a statement of charges, take informal  
30 action, or close the complaint without action against a practitioner.  
31 In its biennial report to the legislature under RCW 18.130.310, the  
32 department shall specifically identify the case dispositions of reports  
33 made by hospitals under subsection (1) of this section.

34 (7) The department shall not increase hospital license fees to  
35 carry out this section before July 1, (~~2007~~) 2008.

36 NEW SECTION. **Sec. 15.** A new section is added to chapter 42.52 RCW  
37 to read as follows:

1 Members of a health profession board or commission as identified in  
2 RCW 18.130.040(2)(b) may express their professional opinions to an  
3 elected official about the work of the board or commission on which the  
4 member serves, even if those opinions differ from the department of  
5 health's official position. Such communication shall be to inform the  
6 elected official and not to lobby in support or opposition to any  
7 initiative to the legislature.

8 **Sec. 16.** RCW 43.70.320 and 1993 c 492 s 411 are each amended to  
9 read as follows:

10 (1) There is created in the state treasury an account to be known  
11 as the health professions account. All fees received by the department  
12 for health professions licenses, registration, certifications,  
13 renewals, or examinations and the civil penalties assessed and  
14 collected by the department under RCW 18.130.190 shall be forwarded to  
15 the state treasurer who shall credit such moneys to the health  
16 professions account.

17 (2) All expenses incurred in carrying out the health professions  
18 licensing activities of the department shall be paid from the account  
19 as authorized by legislative appropriation, except as provided in  
20 subsection (4) of this section. Any residue in the account shall be  
21 accumulated and shall not revert to the general fund at the end of the  
22 biennium.

23 (3) The secretary shall biennially prepare a budget request based  
24 on the anticipated costs of administering the health professions  
25 licensing activities of the department which shall include the  
26 estimated income from health professions fees.

27 (4) The secretary shall, at the request of a board or commission as  
28 applicable, spend unappropriated funds in the health professions  
29 account that are allocated to the requesting board or commission to  
30 meet unanticipated costs of that board or commission when revenues  
31 exceed more than fifteen percent over the department's estimated  
32 six-year spending projections for the requesting board or commission.  
33 Unanticipated costs shall be limited to spending as authorized in  
34 subsection (3) of this section for anticipated costs.

35 **Sec. 17.** RCW 18.130.040 and 2007 c 269 s 17 and 2007 c 70 s 11 are  
36 each reenacted and amended to read as follows:



1 (1) This chapter applies only to the secretary and the boards and  
2 commissions having jurisdiction in relation to the professions licensed  
3 under the chapters specified in this section. This chapter does not  
4 apply to any business or profession not licensed under the chapters  
5 specified in this section.

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

8 (i) Dispensing opticians licensed and designated apprentices under  
9 chapter 18.34 RCW;

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

11 (iii) Midwives licensed under chapter 18.50 RCW;

12 (iv) Ocularists licensed under chapter 18.55 RCW;

13 (v) Massage operators and businesses licensed under chapter 18.108  
14 RCW;

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

16 (vii) Acupuncturists licensed under chapter 18.06 RCW;

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

19 (ix) Respiratory care practitioners licensed under chapter 18.89  
20 RCW;

21 (x) Persons registered under chapter 18.19 RCW;

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

24 (xii) Persons registered as nursing pool operators under chapter  
25 18.52C RCW;

26 (xiii) Nursing assistants registered or certified under chapter  
27 18.88A RCW;

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

29 (xv) Dietitians and nutritionists certified under chapter 18.138  
30 RCW;

31 (xvi) Chemical dependency professionals certified under chapter  
32 18.205 RCW;

33 (xvii) Sex offender treatment providers and certified affiliate sex  
34 offender treatment providers certified under chapter 18.155 RCW;

35 (xviii) Persons licensed and certified under chapter 18.73 RCW or  
36 RCW 18.71.205;

37 (xix) Denturists licensed under chapter 18.30 RCW;

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

1 (xxi) Surgical technologists registered under chapter 18.215 RCW;  
2 (xxii) Recreational therapists; and  
3 (xxiii) Animal massage practitioners certified under chapter 18.240  
4 RCW.

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

7 (i) The podiatric medical board as established in chapter 18.22  
8 RCW;

9 (ii) The chiropractic quality assurance commission as established  
10 in chapter 18.25 RCW;

11 (iii) The dental quality assurance commission as established in  
12 chapter 18.32 RCW governing licenses issued under chapter 18.32 RCW and  
13 licenses and registrations issued under chapter 18.260 RCW;

14 (iv) The board of hearing and speech as established in chapter  
15 18.35 RCW;

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

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

20 (vii) The board of osteopathic medicine and surgery as established  
21 in chapter 18.57 RCW governing licenses issued under chapters 18.57 and  
22 18.57A RCW;

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

25 (ix) The medical quality assurance commission as established in  
26 chapter 18.71 RCW governing licenses and registrations issued under  
27 chapters 18.71 and 18.71A RCW;

28 (x) The board of physical therapy as established in chapter 18.74  
29 RCW;

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

32 (xii) The nursing care quality assurance commission as established  
33 in chapter 18.79 RCW governing licenses and registrations issued under  
34 that chapter;

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

37 (xiv) The veterinary board of governors as established in chapter  
38 18.92 RCW.

1 (3) In addition to the authority to discipline license holders, the  
2 disciplining authority has the authority to grant or deny licenses  
3 (~~based on the conditions and criteria established in this chapter and~~  
4 ~~the chapters specified in subsection (2) of this section. This chapter~~  
5 ~~also governs any investigation, hearing, or proceeding relating to~~  
6 ~~denial of licensure or issuance of a license conditioned on the~~  
7 ~~applicant's compliance with an order entered pursuant to RCW 18.130.160~~  
8 ~~by~~)). The disciplining authority may also grant a license subject to  
9 conditions.

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

14 **Sec. 18.** RCW 18.130.040 and 2007 c 269 s 17, 2007 c 253 s 13, and  
15 2007 c 70 s 11 are each reenacted and amended to read as follows:

16 (1) This chapter applies only to the secretary and the boards and  
17 commissions having jurisdiction in relation to the professions licensed  
18 under the chapters specified in this section. This chapter does not  
19 apply to any business or profession not licensed under the chapters  
20 specified in this section.

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

23 (i) Dispensing opticians licensed and designated apprentices under  
24 chapter 18.34 RCW;

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

26 (iii) Midwives licensed under chapter 18.50 RCW;

27 (iv) Ocularists licensed under chapter 18.55 RCW;

28 (v) Massage operators and businesses licensed under chapter 18.108  
29 RCW;

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

31 (vii) Acupuncturists licensed under chapter 18.06 RCW;

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

34 (ix) Respiratory care practitioners licensed under chapter 18.89  
35 RCW;

36 (x) Persons registered under chapter 18.19 RCW;

1 (xi) Persons licensed as mental health counselors, marriage and  
2 family therapists, and social workers under chapter 18.225 RCW;  
3 (xii) Persons registered as nursing pool operators under chapter  
4 18.52C RCW;  
5 (xiii) Nursing assistants registered or certified under chapter  
6 18.88A RCW;  
7 (xiv) Health care assistants certified under chapter 18.135 RCW;  
8 (xv) Dietitians and nutritionists certified under chapter 18.138  
9 RCW;  
10 (xvi) Chemical dependency professionals certified under chapter  
11 18.205 RCW;  
12 (xvii) Sex offender treatment providers and certified affiliate sex  
13 offender treatment providers certified under chapter 18.155 RCW;  
14 (xviii) Persons licensed and certified under chapter 18.73 RCW or  
15 RCW 18.71.205;  
16 (xix) Denturists licensed under chapter 18.30 RCW;  
17 (xx) Orthotists and prosthetists licensed under chapter 18.200 RCW;  
18 (xxi) Surgical technologists registered under chapter 18.215 RCW;  
19 (xxii) Recreational therapists;  
20 (xxiii) Animal massage practitioners certified under chapter 18.240  
21 RCW; and  
22 (xxiv) Athletic trainers licensed under chapter 18.250 RCW.  
23 (b) The boards and commissions having authority under this chapter  
24 are as follows:  
25 (i) The podiatric medical board as established in chapter 18.22  
26 RCW;  
27 (ii) The chiropractic quality assurance commission as established  
28 in chapter 18.25 RCW;  
29 (iii) The dental quality assurance commission as established in  
30 chapter 18.32 RCW governing licenses issued under chapter 18.32 RCW and  
31 licenses and registrations issued under chapter 18.260 RCW;  
32 (iv) The board of hearing and speech as established in chapter  
33 18.35 RCW;  
34 (v) The board of examiners for nursing home administrators as  
35 established in chapter 18.52 RCW;  
36 (vi) The optometry board as established in chapter 18.54 RCW  
37 governing licenses issued under chapter 18.53 RCW;

1 (vii) The board of osteopathic medicine and surgery as established  
2 in chapter 18.57 RCW governing licenses issued under chapters 18.57 and  
3 18.57A RCW;

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

6 (ix) The medical quality assurance commission as established in  
7 chapter 18.71 RCW governing licenses and registrations issued under  
8 chapters 18.71 and 18.71A RCW;

9 (x) The board of physical therapy as established in chapter 18.74  
10 RCW;

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

13 (xii) The nursing care quality assurance commission as established  
14 in chapter 18.79 RCW governing licenses and registrations issued under  
15 that chapter;

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

18 (xiv) The veterinary board of governors as established in chapter  
19 18.92 RCW.

20 (3) In addition to the authority to discipline license holders, the  
21 disciplining authority has the authority to grant or deny licenses  
22 (~~based on the conditions and criteria established in this chapter and~~  
23 ~~the chapters specified in subsection (2) of this section. This chapter~~  
24 ~~also governs any investigation, hearing, or proceeding relating to~~  
25 ~~denial of licensure or issuance of a license conditioned on the~~  
26 ~~applicant's compliance with an order entered pursuant to RCW 18.130.160~~  
27 ~~by)). The disciplining authority may also grant a license subject to  
28 conditions.~~

29 (4) All disciplining authorities shall adopt procedures to ensure  
30 substantially consistent application of this chapter, the Uniform  
31 Disciplinary Act, among the disciplining authorities listed in  
32 subsection (2) of this section.

33 NEW SECTION. Sec. 19. A new section is added to chapter 18.130  
34 RCW to read as follows:

35 (1) The disciplining authority may deny an application for  
36 licensure or grant a license with conditions if the applicant:

1 (a) Has had his or her license to practice any health care  
2 profession suspended, revoked, or restricted, by competent authority in  
3 any state, federal, or foreign jurisdiction;

4 (b) Has committed any act defined as unprofessional conduct for a  
5 license holder under RCW 18.130.180;

6 (c) Has been convicted or is subject to current prosecution or  
7 pending charges of a crime involving moral turpitude or a crime  
8 identified in RCW 43.43.830. For purposes of this section, conviction  
9 includes all instances in which a plea of guilty or nolo contendere is  
10 the basis for the conviction and all proceedings in which the  
11 prosecution or sentence has been deferred or suspended. At the request  
12 of an applicant for an original license whose conviction is under  
13 appeal, the disciplining authority may defer decision upon the  
14 application during the pendency of such a prosecution or appeal;

15 (d) Fails to prove that he or she is qualified in accordance with  
16 the provisions of this chapter, the chapters identified in RCW  
17 18.130.040(2), or the rules adopted by the disciplining authority; or

18 (e) Is not able to practice with reasonable skill and safety to  
19 consumers by reason of any mental or physical condition.

20 (i) The disciplining authority may require the applicant, at his or  
21 her own expense, to submit to a mental, physical, or psychological  
22 examination by one or more licensed health professionals designated by  
23 the disciplining authority. The disciplining authority shall provide  
24 written notice of its requirement for a mental or physical examination  
25 that includes a statement of the specific conduct, event, or  
26 circumstances justifying an examination and a statement of the nature,  
27 purpose, scope, and content of the intended examination. If the  
28 applicant fails to submit to the examination or provide the results of  
29 the examination or any required waivers, the disciplining authority may  
30 deny the application.

31 (ii) An applicant governed by this chapter is deemed to have given  
32 consent to submit to a mental, physical, or psychological examination  
33 when directed in writing by the disciplining authority and further to  
34 have waived all objections to the admissibility or use of the examining  
35 health professional's testimony or examination reports by the  
36 disciplining authority on the grounds that the testimony or reports  
37 constitute privileged communications.

1 (2) The provisions of RCW 9.95.240 and chapter 9.96A RCW do not  
2 apply to a decision to deny a license under this section.

3 (3) The disciplining authority shall give written notice to the  
4 applicant of the decision to deny a license or grant a license with  
5 conditions in response to an application for a license. The notice  
6 must state the grounds and factual basis for the action and be served  
7 upon the applicant.

8 (4) A license applicant who is aggrieved by the decision to deny  
9 the license or grant the license with conditions has the right to an  
10 adjudicative proceeding. The application for adjudicative proceeding  
11 must be in writing, state the basis for contesting the adverse action,  
12 include a copy of the adverse notice, and be served on and received by  
13 the department within twenty-eight days of the decision. The license  
14 applicant has the burden to establish, by a preponderance of evidence,  
15 that the license applicant is qualified in accordance with the  
16 provisions of this chapter, the chapters identified in RCW  
17 18.130.040(2), and the rules adopted by the disciplining authority.

18 NEW SECTION. **Sec. 20.** A new section is added to chapter 18.130  
19 RCW to read as follows:

20 (1)(a) A licensee must produce documents, records, or other items  
21 that are within his or her possession or control within twenty-one  
22 calendar days of service of a request by a disciplining authority. If  
23 the twenty-one calendar day limit results in a hardship upon the  
24 licensee, he or she may request, for good cause, an extension not to  
25 exceed thirty additional calendar days.

26 (b) In the event the licensee fails to produce the documents,  
27 records, or other items as requested by the disciplining authority or  
28 fails to obtain an extension of the time for response, the disciplining  
29 authority may issue a written citation and assess a fine of up to one  
30 hundred dollars per day for each day after the issuance of the citation  
31 until the documents, records, or other items are produced.

32 (c) In no event may the administrative fine assessed by the  
33 disciplining authority exceed five thousand dollars for each  
34 investigation made with respect to the violation.

35 (2) Citations issued under this section must include the following:

36 (a) A statement that the citation represents a determination that

1 the person named has failed to produce documents, records, or other  
2 items as required by this section and that the determination is final  
3 unless contested as provided in this section;

4 (b) A statement of the specific circumstances;

5 (c) A statement of the monetary fine, which is up to one hundred  
6 dollars per day for each day after the issuance of the citation;

7 (d) A statement informing the licensee that if the licensee desires  
8 a hearing to contest the finding of a violation, the hearing must be  
9 requested by written notice to the disciplining authority within twenty  
10 days of the date of issuance of the citation. The hearing is limited  
11 to the issue of whether the licensee timely produced the requested  
12 documents, records, or other items or had good cause for failure to do  
13 so; and

14 (e) A statement that in the event a licensee fails to pay a fine  
15 within thirty days of the date of assessment, the full amount of the  
16 assessed fine must be added to the fee for renewal of the license  
17 unless the citation is being appealed.

18 (3) RCW 18.130.165 governs proof and enforcement of the fine.

19 (4) Administrative fines collected under this section must be  
20 deposited in the health professions account created in RCW 43.70.320.

21 (5) Issuance of a citation under this section does not preclude the  
22 disciplining authority from pursuing other action under this chapter.

23 (6) The disciplining authority shall establish and make available  
24 to licensees the maximum daily monetary fine that may be issued under  
25 subsection (2)(c) of this section. The disciplining authority shall  
26 review the maximum fine on a regular basis, but at a minimum, each  
27 biennium.

28 **Sec. 21.** RCW 18.130.140 and 1984 c 279 s 14 are each amended to  
29 read as follows:

30 An individual who has been disciplined (~~(or)~~), whose license has  
31 been denied, or whose license has been granted with conditions by a  
32 disciplining authority may appeal the decision as provided in chapter  
33 34.05 RCW.

34 **Sec. 22.** RCW 18.130.150 and 1997 c 58 s 831 are each amended to  
35 read as follows:

36 A person whose license has been suspended (~~(or revoked)~~) under this



1 chapter may petition the disciplining authority for reinstatement after  
2 an interval as determined by the disciplining authority in the order  
3 unless the disciplining authority has found, pursuant to RCW  
4 18.130.160, that the licensee can never be rehabilitated or can never  
5 regain the ability to practice with reasonable skill and safety. The  
6 disciplining authority shall hold hearings on the petition and may deny  
7 the petition or may order reinstatement and impose terms and conditions  
8 as provided in RCW 18.130.160 and issue an order of reinstatement. The  
9 disciplining authority may require successful completion of an  
10 examination as a condition of reinstatement.

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

20 **Sec. 23.** RCW 18.130.165 and 1993 c 367 s 20 are each amended to  
21 read as follows:

22 Where an order for payment of a fine is made as a result of a  
23 citation under section 20 of this act or a hearing under RCW 18.130.100  
24 or 18.130.190 and timely payment is not made as directed in the final  
25 order, the disciplining authority may enforce the order for payment in  
26 the superior court in the county in which the hearing was held. This  
27 right of enforcement shall be in addition to any other rights the  
28 disciplining authority may have as to any licensee ordered to pay a  
29 fine but shall not be construed to limit a licensee's ability to seek  
30 judicial review under RCW 18.130.140.

31 In any action for enforcement of an order of payment of a fine, the  
32 disciplining authority's order is conclusive proof of the validity of  
33 the order of payment of a fine and the terms of payment.

34 **Sec. 24.** RCW 18.130.172 and 2000 c 171 s 29 are each amended to  
35 read as follows:

36 (1) Prior to serving a statement of charges under RCW 18.130.090 or

1 18.130.170, the disciplinary authority may furnish a statement of  
2 allegations to the licensee ((~~or applicant~~)) along with a detailed  
3 summary of the evidence relied upon to establish the allegations and a  
4 proposed stipulation for informal resolution of the allegations. These  
5 documents shall be exempt from public disclosure until such time as the  
6 allegations are resolved either by stipulation or otherwise.

7 (2) The disciplinary authority and the ((~~applicant or~~)) licensee  
8 may stipulate that the allegations may be disposed of informally in  
9 accordance with this subsection. The stipulation shall contain a  
10 statement of the facts leading to the filing of the complaint; the act  
11 or acts of unprofessional conduct alleged to have been committed or the  
12 alleged basis for determining that the ((~~applicant or~~)) licensee is  
13 unable to practice with reasonable skill and safety; a statement that  
14 the stipulation is not to be construed as a finding of either  
15 unprofessional conduct or inability to practice; an acknowledgment that  
16 a finding of unprofessional conduct or inability to practice, if  
17 proven, constitutes grounds for discipline under this chapter; and an  
18 agreement on the part of the licensee ((~~or applicant~~)) that the  
19 sanctions set forth in RCW 18.130.160, except RCW 18.130.160 (1), (2),  
20 (6), and (8), may be imposed as part of the stipulation, except that no  
21 fine may be imposed but the licensee ((~~or applicant~~)) may agree to  
22 reimburse the disciplinary authority the costs of investigation and  
23 processing the complaint up to an amount not exceeding one thousand  
24 dollars per allegation; and an agreement on the part of the  
25 disciplinary authority to forego further disciplinary proceedings  
26 concerning the allegations. A stipulation entered into pursuant to  
27 this subsection shall not be considered formal disciplinary action.

28 (3) If the licensee ((~~or applicant~~)) declines to agree to  
29 disposition of the charges by means of a stipulation pursuant to  
30 subsection (2) of this section, the disciplinary authority may proceed  
31 to formal disciplinary action pursuant to RCW 18.130.090 or 18.130.170.

32 (4) Upon execution of a stipulation under subsection (2) of this  
33 section by both the licensee ((~~or applicant~~)) and the disciplinary  
34 authority, the complaint is deemed disposed of and shall become subject  
35 to public disclosure on the same basis and to the same extent as other  
36 records of the disciplinary authority. Should the licensee ((~~or~~  
37 ~~applicant~~)) fail to pay any agreed reimbursement within thirty days of

1 the date specified in the stipulation for payment, the disciplinary  
2 authority may seek collection of the amount agreed to be paid in the  
3 same manner as enforcement of a fine under RCW 18.130.165.

4 **Sec. 25.** RCW 18.130.180 and 1995 c 336 s 9 are each amended to  
5 read as follows:

6 The following conduct, acts, or conditions constitute  
7 unprofessional conduct for any license holder (~~(or applicant)~~) under  
8 the jurisdiction of this chapter:

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

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

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

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

32 (5) Suspension, revocation, or restriction of the individual's  
33 license to practice any health care profession by competent authority  
34 in any state, federal, or foreign jurisdiction, a certified copy of the  
35 order, stipulation, or agreement being conclusive evidence of the  
36 revocation, suspension, or restriction;

1 (6) The possession, use, prescription for use, or distribution of  
2 controlled substances or legend drugs in any way other than for  
3 legitimate or therapeutic purposes, diversion of controlled substances  
4 or legend drugs, the violation of any drug law, or prescribing  
5 controlled substances for oneself;

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

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

11 (a) Not furnishing any papers (~~(or)~~), documents, records, or other  
12 items;

13 (b) Not furnishing in writing a full and complete explanation  
14 covering the matter contained in the complaint filed with the  
15 disciplining authority;

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

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

22 (9) Failure to comply with an order issued by the disciplining  
23 authority or a stipulation for informal disposition entered into with  
24 the disciplining authority;

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

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

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

30 (13) Misrepresentation or fraud in any aspect of the conduct of the  
31 business or profession;

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

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

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

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

7 (18) The procuring, or aiding or abetting in procuring, a criminal  
8 abortion;

9 (19) The offering, undertaking, or agreeing to cure or treat  
10 disease by a secret method, procedure, treatment, or medicine, or the  
11 treating, operating, or prescribing for any health condition by a  
12 method, means, or procedure which the licensee refuses to divulge upon  
13 demand of the disciplining authority;

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

16 (21) Violation of chapter 19.68 RCW;

17 (22) Interference with an investigation or disciplinary proceeding  
18 by willful misrepresentation of facts before the disciplining authority  
19 or its authorized representative, or by the use of threats or  
20 harassment against any patient or witness to prevent them from  
21 providing evidence in a disciplinary proceeding or any other legal  
22 action, or by the use of financial inducements to any patient or  
23 witness to prevent or attempt to prevent him or her from providing  
24 evidence in a disciplinary proceeding;

25 (23) Current misuse of:

26 (a) Alcohol;

27 (b) Controlled substances; or

28 (c) Legend drugs;

29 (24) Abuse of a client or patient or sexual contact with a client  
30 or patient;

31 (25) Acceptance of more than a nominal gratuity, hospitality, or  
32 subsidy offered by a representative or vendor of medical or health-  
33 related products or services intended for patients, in contemplation of  
34 a sale or for use in research publishable in professional journals,  
35 where a conflict of interest is presented, as defined by rules of the  
36 disciplining authority, in consultation with the department, based on  
37 recognized professional ethical standards.

1       **Sec. 26.** RCW 9.96A.020 and 1999 c 16 s 1 are each amended to read  
2 as follows:

3       (1) Subject to the exceptions in subsections (3) and (4) of this  
4 section, and unless there is another provision of law to the contrary,  
5 a person is not disqualified from employment by the state of Washington  
6 or any of its counties, cities, towns, municipal corporations, or  
7 quasi-municipal corporations, nor is a person disqualified to practice,  
8 pursue or engage in any occupation, trade, vocation, or business for  
9 which a license, permit, certificate or registration is required to be  
10 issued by the state of Washington or any of its counties, cities,  
11 towns, municipal corporations, or quasi-municipal corporations solely  
12 because of a prior conviction of a felony. However, this section does  
13 not preclude the fact of any prior conviction of a crime from being  
14 considered.

15       (2) A person may be denied employment by the state of Washington or  
16 any of its counties, cities, towns, municipal corporations, or quasi-  
17 municipal corporations, or a person may be denied a license, permit,  
18 certificate or registration to pursue, practice or engage in an  
19 occupation, trade, vocation, or business by reason of the prior  
20 conviction of a felony if the felony for which he or she was convicted  
21 directly relates to the position of employment sought or to the  
22 specific occupation, trade, vocation, or business for which the  
23 license, permit, certificate or registration is sought, and the time  
24 elapsed since the conviction is less than ten years. However, for  
25 positions in the county treasurer's office, a person may be  
26 disqualified from employment because of a prior guilty plea or  
27 conviction of a felony involving embezzlement or theft, even if the  
28 time elapsed since the guilty plea or conviction is ten years or more.

29       (3) A person is disqualified for any certificate required or  
30 authorized under chapters 28A.405 or 28A.410 RCW, because of a prior  
31 guilty plea or the conviction of a felony involving sexual exploitation  
32 of a child under chapter 9.68A RCW, sexual offenses under chapter 9A.44  
33 RCW where a minor is the victim, promoting prostitution of a minor  
34 under chapter 9A.88 RCW, or a violation of similar laws of another  
35 jurisdiction, even if the time elapsed since the guilty plea or  
36 conviction is ten years or more.

37       (4) A person is disqualified from employment by school districts,  
38 educational service districts, and their contractors hiring employees

1 who will have regularly scheduled unsupervised access to children,  
2 because of a prior guilty plea or conviction of a felony involving  
3 sexual exploitation of a child under chapter 9.68A RCW, sexual offenses  
4 under chapter 9A.44 RCW where a minor is the victim, promoting  
5 prostitution of a minor under chapter 9A.88 RCW, or a violation of  
6 similar laws of another jurisdiction, even if the time elapsed since  
7 the guilty plea or conviction is ten years or more.

8 (5) The provisions of this chapter do not apply to issuance of  
9 licenses or credentials for professions regulated under chapter 18.130  
10 RCW.

11 (6) Subsections (3) and (4) of this section only apply to a person  
12 applying for a certificate or for employment on or after July 25, 1993.  
13 Subsection (5) of this section only applies to a person applying for a  
14 license or credential on or after the effective date of this section.

15 **Sec. 27.** RCW 9.95.240 and 2003 c 66 s 1 are each amended to read  
16 as follows:

17 (1) Every defendant who has fulfilled the conditions of his or her  
18 probation for the entire period thereof, or who shall have been  
19 discharged from probation prior to the termination of the period  
20 thereof, may at any time prior to the expiration of the maximum period  
21 of punishment for the offense for which he or she has been convicted be  
22 permitted in the discretion of the court to withdraw his or her plea of  
23 guilty and enter a plea of not guilty, or if he or she has been  
24 convicted after a plea of not guilty, the court may in its discretion  
25 set aside the verdict of guilty; and in either case, the court may  
26 thereupon dismiss the information or indictment against such defendant,  
27 who shall thereafter be released from all penalties and disabilities  
28 resulting from the offense or crime of which he or she has been  
29 convicted. The probationer shall be informed of this right in his or  
30 her probation papers: PROVIDED, That in any subsequent prosecution,  
31 for any other offense, such prior conviction may be pleaded and proved,  
32 and shall have the same effect as if probation had not been granted, or  
33 the information or indictment dismissed.

34 (2)(a) After the period of probation has expired, the defendant may  
35 apply to the sentencing court for a vacation of the defendant's record  
36 of conviction under RCW 9.94A.640. The court may, in its discretion,

1 clear the record of conviction if it finds the defendant has met the  
2 equivalent of the tests in RCW 9.94A.640(2) as those tests would be  
3 applied to a person convicted of a crime committed before July 1, 1984.

4 (b) The clerk of the court in which the vacation order is entered  
5 shall immediately transmit the order vacating the conviction to the  
6 Washington state patrol identification section and to the local police  
7 agency, if any, which holds criminal history information for the person  
8 who is the subject of the conviction. The Washington state patrol and  
9 any such local police agency shall immediately update their records to  
10 reflect the vacation of the conviction, and shall transmit the order  
11 vacating the conviction to the federal bureau of investigation. A  
12 conviction that has been vacated under this section may not be  
13 disseminated or disclosed by the state patrol or local law enforcement  
14 agency to any person, except other criminal justice enforcement  
15 agencies.

16 (3) This section does not apply to chapter 18.130 RCW.

17 **Sec. 28.** RCW 43.43.825 and 2006 c 99 s 8 are each amended to read  
18 as follows:

19 (1) Upon a guilty plea or conviction of a person for any felony  
20 crime involving homicide under chapter 9A.32 RCW, assault under chapter  
21 9A.36 RCW, kidnapping under chapter 9A.40 RCW, ~~((~~o~~))~~ sex offenses  
22 under chapter 9A.44 RCW, financial crimes under chapter 9A.60 RCW,  
23 violations of the uniform controlled substances act under chapter 69.50  
24 RCW, any drug offense defined under RCW 9.94A.030, or a crime of any  
25 type classified as a felony under Washington state law, the prosecuting  
26 attorney shall notify the state patrol of such guilty pleas or  
27 convictions.

28 (2) When the state patrol receives information that a person has  
29 pled guilty to or been convicted of one of the felony crimes under  
30 subsection (1) of this section, the state patrol shall transmit that  
31 information to the department of health. It is the duty of the  
32 department of health to identify whether the person holds a credential  
33 issued by a disciplining authority listed under RCW 18.130.040, and  
34 provide this information to the disciplining authority that issued the  
35 credential to the person who pled guilty or was convicted of a crime  
36 listed in subsection (1) of this section.



1        NEW SECTION.    **Sec. 29.** Section 17 of this act expires July 1,  
2 2008.

3        NEW SECTION.    **Sec. 30.** Section 18 of this act takes effect July 1,  
4 2008.

5        NEW SECTION.    **Sec. 31.** If any provision of this act or its  
6 application to any person or circumstance is held invalid, the  
7 remainder of the act or the application of the provision to other  
8 persons or circumstances is not affected.

9        NEW SECTION.    **Sec. 32.** The code reviser is directed to put the  
10 defined terms in RCW 18.130.020 in alphabetical order.

11        NEW SECTION.    **Sec. 33.** Except for sections 2 and 18 of this act,  
12 which take effect July 1, 2008, and for section 7 of this act, which  
13 takes effect January 1, 2009, this act is necessary for the immediate  
14 preservation of the public peace, health, or safety, or support of the  
15 state government and its existing public institutions, and takes effect  
16 immediately.

--- END ---