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**SUBSTITUTE HOUSE BILL 1135**

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**State of Washington**

**64th Legislature**

**2015 Regular Session**

**By** House Health Care & Wellness (originally sponsored by Representatives Cody, Harris, Jenkins, and Gregerson; by request of Department of Health)

READ FIRST TIME 02/17/15.

1 AN ACT Relating to education-based practice remediation for  
2 licensed health and health-related professions; and adding a new  
3 section to chapter 18.130 RCW.

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

5 NEW SECTION. **Sec. 1.** A new section is added to chapter 18.130  
6 RCW to read as follows:

7 (1) In addition to the authority to take formal disciplinary  
8 action under RCW 18.130.090 or 18.130.170, and informal discipline  
9 under RCW 18.130.172, the disciplining authority may, after  
10 investigation, offer a license holder a remediation plan to resolve  
11 eligible complaints of unprofessional conduct under this section.

12 (2)(a) A remediation plan must not be used in any case in which  
13 there is evidence of harm to a patient or client as a direct result  
14 of the license holder's practice-related deficiencies.

15 (b) A remediation plan may be offered at the discretion of the  
16 disciplining authority to resolve eligible complaints. Nothing in  
17 this subsection:

18 (i) Requires the use of a remediation plan before taking informal  
19 or formal disciplinary action; or

20 (ii) Grants a license holder the right to:

21 (A) A remediation plan;

1 (B) A hearing to modify a remediation plan or challenge the  
2 disciplining authority's decision regarding successful completion of  
3 a remediation plan; or

4 (C) An administrative review or appeal.

5 (3) A disciplining authority may not offer a remediation plan to  
6 resolve a complaint if:

7 (a) The investigation reveals evidence of:

8 (i) Abuse, neglect, or financial exploitation of a patient or  
9 client;

10 (ii) Sexual misconduct;

11 (iii) Diversion of a controlled substance or legend drug for the  
12 license holder's personal use or for distribution to another person;

13 (iv) Use, prescription for use, or distribution of a controlled  
14 substance or legend drug in any way other than for legitimate  
15 therapeutic purposes, including prescribing a controlled substance  
16 for oneself;

17 (v) Substance abuse or misuse;

18 (vi) Conviction of any felony;

19 (vii) Gross incompetence; or

20 (viii) Any other category of allegation identified by the  
21 disciplining authority in rule;

22 (b) The license holder is currently subject to informal or formal  
23 disciplinary action;

24 (c) The disciplining authority determines the appropriate  
25 resolution requires restriction, suspension, or revocation of the  
26 license holder's credential;

27 (d) The license holder has been engaged in a remediation plan  
28 with the disciplining authority during the five years immediately  
29 before receipt of the complaint. A disciplining authority may adopt  
30 rules establishing less frequent eligibility; or

31 (e) The license holder has ever been engaged in a remediation  
32 plan with the disciplining authority based on allegations of the same  
33 general nature as the allegations in the current investigative file.

34 (4) When entering into a remediation plan, the disciplining  
35 authority and a license holder must acknowledge and agree:

36 (a) The license holder does not admit to any acts of  
37 unprofessional conduct and the disciplining authority makes no  
38 finding of unprofessional conduct;

39 (b) The remediation plan is not disciplinary action, adverse  
40 action, or negative action, and is not reportable under RCW

1 18.130.110 to national databases, professional associations or  
2 organizations, the media, or counterpart licensing boards in other  
3 states;

4 (c) The remediation plan must be posted on the department's web  
5 site during the term of the plan. The department shall remove the  
6 posting from the web site as soon as practicable after the  
7 disciplining authority determines that the license holder has  
8 successfully completed the remediation plan;

9 (d) The remediation plan is not admissible in any civil,  
10 criminal, or administrative action, except it is admissible in any  
11 disciplinary proceeding by any disciplining authority;

12 (e) The remediation plan and all related documents are subject to  
13 public disclosure under chapter 42.56 RCW;

14 (f) The complainant will be notified that the license holder and  
15 disciplining authority have agreed to resolve the complaint through a  
16 remediation plan;

17 (g) The license holder must sign all necessary releases to allow  
18 the disciplining authority to receive information relevant to  
19 compliance with the remediation plan;

20 (h) The disciplining authority may assess a fee against the  
21 license holder in an amount necessary to recover the costs of  
22 administering the remediation plan;

23 (i) Successful completion of the remediation plan resolves the  
24 allegations of unprofessional conduct contained in the investigative  
25 file and no other sanction may be imposed based solely on that  
26 conduct;

27 (j) The disciplining authority may investigate and take  
28 disciplinary action based on any allegation received or evidence  
29 discovered during the term of the remediation plan; and

30 (k) In the event the license holder fails to comply with the  
31 remediation plan, the disciplining authority may take disciplinary  
32 action against the license holder and the license holder may not  
33 contest or object to the admissibility of evidence contained in the  
34 investigative file.

35 (5) A disciplining authority may adopt rules necessary to  
36 implement this section.

37 (6) For the purposes of this section:

38 (a) "Gross incompetence" means the license holder does not have  
39 the ability to practice with reasonable skill and safety as  
40 determined by the disciplining authority.

1 (b) "License holder" means a person registered, certified, or  
2 licensed in a profession listed in RCW 18.130.040(2).

3 (c) "Remediation plan" means an agreement between the  
4 disciplining authority and the license holder that includes one or  
5 more educational or corrective activities intended to resolve  
6 practice-related deficiencies.

7 (d) "Sexual misconduct" means:

8 (i) Sexual contact with a current client or patient as defined by  
9 the disciplining authority in rule;

10 (ii) Sexual contact with a former client or patient within a  
11 period of time prohibited by the disciplining authority in rule;

12 (iii) Sexual contact with any person involving force,  
13 intimidation, or lack of consent; or

14 (iv) Conviction of a sex offense as defined in RCW 9.94A.030.

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