

HOUSE BILL REPORT

ESSB 5948

As Reported By House Committee On:
Health Care

Title: An act relating to procedures for responding to violations of the uniform disciplinary act.

Brief Description: Modifying process and procedures for disciplining of health care professionals.

Sponsors: Senate Committee on Health & Human Services (originally sponsored by Senators Deccio, Talmadge, Franklin, Prentice and McCaslin).

Brief History:

Reported by House Committee on:
Health Care, April 2, 1993, DPA.

HOUSE COMMITTEE ON HEALTH CARE

Majority Report: Do pass as amended. Signed by 15 members: Representatives Dellwo, Chair; L. Johnson, Vice Chair; Dyer, Ranking Minority Member; Ballasiotes, Assistant Ranking Minority Member; Appelwick; Campbell; Conway; Cooke; Flemming; Lisk; Mastin; Mielke; Morris; Thibaudeau; and Veloria.

Staff: John Welsh (786-7133).

Background: The state's regulated health professions are subject to the Uniform Disciplinary Act (UDA). The UDA standardizes procedures related to the disciplining of health care professionals, as well as the range of sanctions available for imposition. The secretary of health is the disciplinary authority for 21 of the state's regulated health professions. Independent regulatory boards are the disciplinary authority for the remaining 19 health professions regulated by the state.

While disciplinary procedures and sanctions are standardized under the UDA, their application may vary among the regulated health care professions, using different standards in pursuing disciplinary investigations and imposing the range of available sanctions.

When charges are issued against an individual for a violation of the UDA, the person charged is allowed 20 days

to request a hearing. No provision currently exists for allowing an extension. License holders in substance abuse monitoring treatment programs are not subject to discipline provided they meet program conditions and successfully complete treatment. Participants suffering a lapse in treatment may be disciplined regardless of whether they are making progress toward successful completion of treatment.

Currently, the UDA does not cover health care assistants, nor the practice of pharmacy. However, pharmacy is currently covered under the procedures of the Voluntary Substance Abuse Monitoring Program.

A disciplinary authority such as a board or the secretary of health may levy a fine for unprofessional conduct not exceeding \$1,000.

Liability insurers are required to report to the Medical Disciplinary Board any physician's malpractice settlement, award or payment in excess of \$20,000, and three or more claims in a year.

Physicians are required to pay an annual medical disciplinary assessment equal to the license renewal fee, but the assessment is not required of physician assistants.

The secretary of health is required to investigate complaints against persons for unlicensed practice, and may issue cease and desist orders after notice and hearing. However, the secretary has no authority to fine persons for unlicensed practice. The secretary may also issue temporary cease and desist orders where the public interest could be irreparably harmed by any delay.

In lieu of issuing a statement of charges or conducting a hearing on any complaint alleging a violation of the Uniform Disciplinary Act, a disciplinary authority may enter into an assurance of discontinuance with a license holder which consists of a statement of the law and an agreement not to violate it. This is not to be construed as an admission of any violation. However, there is no provision for the parties to enter into either a formal or informal stipulated agreement in disposing of disciplinary complaints.

The disciplinary authorities do not have the ability to establish panels of board members to delegate their duties, nor the authority to review and audit records of hospital quality assurance committee decisions terminating or restricting the practice privileges of health practitioners.

The secretary is required to appoint a medical practice investigator to inspect the registration and utilization of physician assistants.

Summary of Amended Bill: Individuals charged with a violation of the UDA may be granted up to an additional 60 days to request a hearing on the charges. The disciplinary authority may grant such requests for good cause.

Modifications are made in the substance abuse monitoring treatment programs. Participants suffering a setback in complying with treatment program requirements will be encouraged to continue to participate in the program, and may do so without disciplinary action, if they are evaluated as being able to continue to practice with reasonable skill and safety.

The secretary of health shall develop uniform procedural rules to respond to public inquiries about complaints, investigations and final actions in disciplinary cases. Uniform procedures for conducting investigations are also required. Persons under investigation for a violation of the UDA shall be informed of the nature of the complaint, their right to legal counsel prior to making statements and that statements made by them may be used in adjudicative proceedings. Witnesses may also be informed that statements they make to investigators may be used in filing charges against the license holder, applicant or unlicensed person under investigation.

The secretary of health, or his or her designee, shall serve as the presiding officer during all proceedings involving disciplinary actions for violations of the UDA. This does not apply to violations of the Funeral Directors' and Embalmers' Practice Act. When the disciplinary authority for the profession involved in the proceeding is a regulatory board, the presiding officer shall not have a vote on the final decision.

The disciplinary procedures and sanctions for unprofessional conduct of the Uniform Disciplinary Act are extended to cover health care assistants and the practice of pharmacy.

The maximum amount of fine is raised from \$1,000 to \$5,000.

Liability insurers are required to report to the Medical Disciplinary Board any physician's malpractice settlement, award or payment in excess of \$100,000 and three or more malpractice claims in a five-year time period.

Physician assistants, in addition to physicians, are required to pay an annual medical disciplinary assessment.

The authority of the secretary to issue cease and desist orders is clarified. The secretary may issue a notice of intention to issue a cease and desist order, subject to a request for an adjudicative hearing. The request must be made within 20 days after service of the notice. Failure to request a hearing constitutes a default and may result in a permanent cease and desist order, and may include a fine of up to \$1,000 for each day of unlicensed practice. The secretary may also issue a temporary cease and desist order subject to the right of a prompt hearing.

The use of the assurance of discontinuance for a disposition of a complaint is repealed and replaced with the stipulated agreement. A disciplinary authority may enter into a formal or informal stipulated agreement with a license holder, where the license holder has elected to forego a hearing. The formal stipulated agreement can be entered into after the filing of any charges against the license holder and will contain findings of unprofessional conduct and sanctions. An informal stipulated agreement can be entered into prior to the filing of charges and will contain a statement of the finding of facts; a statement that the stipulation is not to be construed as a finding of unprofessional conduct, but that the findings, if proven, constitute grounds for discipline; and an agreement that specified sanctions may be imposed. As part of the stipulated agreement, the license holder may agree to reimburse the costs of the investigation up to \$1,000 per violation; and the disciplinary authority may agree to forego further disciplinary proceedings.

The disciplinary authorities may establish panels of three or more board members to perform the duties of the board. They are also authorized to review and audit the decisions of quality assurance committees terminating or restricting the practice privileges of health practitioners. Health facilities are required to produce these records to facilitate the audit. However these records may not be introduced into evidence in any civil action.

The position of medical practice investigator is repealed.

Changes of a technical nature are made involving statutory references, language corrections, and the repeal of conflicting statutes.

Amended Bill Compared to Engrossed Substitute Bill: The UDA is extended to certified health care assistants and the practice of pharmacy. Maximum fines are raised to \$5,000. The thresholds for reporting malpractice payments are raised. The authority for the secretary to issue cease and desist orders is clarified. The use of the assurance of

discontinuance is replaced by the stipulated agreement. The disciplinary authorities may delegate duties to panels, and are authorized to audit decisions of hospital quality assurance programs. Changes of a technical nature are made.

Fiscal Note: Not requested.

Effective Date of Amended Bill: Ninety days after adjournment of session in which bill is passed.

Testimony For: This is an agreed bill supported by the Department of Health updating the Uniform Disciplinary Act. It strengthens the authority of the boards in dealing with violations of unprofessional conduct, and enhances the ability to protect the public. The act is extended to health care assistants who have no disciplinary process; the maximum amount of fines is raised to act as appropriate deterrents; and disciplinary procedures for boards are streamlined by allowing for delegation of some matters to panels.

Testimony Against: None.

Witnesses: Senator Deccio, prime sponsor (pro); Senator Franklin (pro); Ron Weaver, Department of Health (pro); Lis Gildemeister, Washington State Nurses Association (pro); and Patty Brown, Board of Nursing (pro).