
ENGROSSED HOUSE BILL 1256

State of Washington

53rd Legislature

1993 Regular Session

By Representatives Dellwo, Morris and Dyer; by request of Department of Health

Read first time 01/20/93. Referred to Committee on Health Care.

1 AN ACT Relating to the disciplining of health professionals;
2 amending RCW 18.130.040, 18.130.050, 18.130.160, 18.130.175,
3 18.130.185, 18.130.186, 18.130.300, 18.135.070, 18.64.160, 18.64A.050,
4 18.72.340, 18.72.380, 18.130.190, 18.130.165, and 18.130.050;
5 reenacting and amending RCW 18.130.180; adding a new section to chapter
6 18.130 RCW; adding a new section to chapter 18.135 RCW; adding a new
7 section to chapter 18.64 RCW; adding a new section to chapter 18.64A
8 RCW; repealing RCW 18.135.080, 18.64.260, and 18.71A.070; and
9 prescribing penalties.

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

11 **Sec. 1.** RCW 18.130.040 and 1992 c 128 s 6 are each amended to read
12 as follows:

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

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

1 (i) Dispensing opticians licensed under chapter 18.34 RCW;
2 (ii) Naturopaths licensed under chapter 18.36A RCW;
3 (iii) Midwives licensed under chapter 18.50 RCW;
4 (iv) Ocularists licensed under chapter 18.55 RCW;
5 (v) Massage operators and businesses licensed under chapter 18.108
6 RCW;
7 (vi) Dental hygienists licensed under chapter 18.29 RCW;
8 (vii) Acupuncturists certified under chapter 18.06 RCW;
9 (viii) Radiologic technologists certified under chapter 18.84 RCW;
10 (ix) Respiratory care practitioners certified under chapter 18.89
11 RCW;
12 (x) Persons registered or certified under chapter 18.19 RCW;
13 (xi) Persons registered as nursing pool operators;
14 (xii) Nursing assistants registered or certified under chapter
15 (~~18.52B~~) 18.88A RCW;
16 (xiii) Health care assistants certified under chapter 18.135 RCW;
17 (xiv) Dietitians and nutritionists certified under chapter 18.138
18 RCW;
19 (~~(xiv)~~) (xv) Sex offender treatment providers certified under
20 chapter 18.155 RCW; and
21 (~~(xv)~~) (xvi) Persons licensed and certified under chapter 18.73
22 RCW or RCW 18.71.205.
23 (b) The boards having authority under this chapter are as follows:
24 (i) The podiatric medical board as established in chapter 18.22
25 RCW;
26 (ii) The chiropractic disciplinary board as established in chapter
27 18.26 RCW governing licenses issued under chapter 18.25 RCW;
28 (iii) The dental disciplinary board as established in chapter 18.32
29 RCW;
30 (iv) The council on hearing aids as established in chapter 18.35
31 RCW;
32 (v) The board of funeral directors and embalmers as established in
33 chapter 18.39 RCW;
34 (vi) The board of examiners for nursing home administrators as
35 established in chapter 18.52 RCW;
36 (vii) The optometry board as established in chapter 18.54 RCW
37 governing licenses issued under chapter 18.53 RCW;

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

6 (x) The medical disciplinary board as established in chapter 18.72
7 RCW governing licenses and registrations issued under chapters 18.71
8 and 18.71A RCW;

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

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

13 (~~(xii)~~) (xiii) The board of practical nursing as established in
14 chapter 18.78 RCW;

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

17 (~~(xiv)~~) (xv) The board of nursing as established in chapter 18.88
18 RCW; and

19 (~~(xv)~~) (xvi) The veterinary board of governors as established in
20 chapter 18.92 RCW.

21 (3) In addition to the authority to discipline license holders, the
22 disciplining authority has the authority to grant or deny licenses
23 based on the conditions and criteria established in this chapter and
24 the chapters specified in subsection (2) of this section. However, the
25 board of chiropractic examiners has authority over issuance and denial
26 of licenses provided for in chapter 18.25 RCW, the board of dental
27 examiners has authority over issuance and denial of licenses provided
28 for in RCW 18.32.040, and the board of medical examiners has authority
29 over issuance and denial of licenses and registrations provided for in
30 chapters 18.71 and 18.71A RCW. This chapter also governs any
31 investigation, hearing, or proceeding relating to denial of licensure
32 or issuance of a license conditioned on the applicant's compliance with
33 an order entered pursuant to RCW 18.130.160 by the disciplining
34 authority.

35 **Sec. 2.** RCW 18.130.050 and 1987 c 150 s 2 are each amended to read
36 as follows:

37 The disciplining authority has the following authority:

- 1 (1) To adopt, amend, and rescind such rules as are deemed necessary
2 to carry out this chapter;
- 3 (2) To investigate all complaints or reports of unprofessional
4 conduct as defined in this chapter and to hold hearings as provided in
5 this chapter;
- 6 (3) To issue subpoenas and administer oaths in connection with any
7 investigation, hearing, or proceeding held under this chapter;
- 8 (4) To take or cause depositions to be taken and use other
9 discovery procedures as needed in any investigation, hearing, or
10 proceeding held under this chapter;
- 11 (5) To compel attendance of witnesses at hearings;
- 12 (6) In the course of investigating a complaint or report of
13 unprofessional conduct, to conduct practice reviews;
- 14 (7) To take emergency action ordering summary suspension of a
15 license, or restriction or limitation of the licensee's practice
16 pending proceedings by the disciplining authority;
- 17 (8) To use the office of administrative hearings as authorized in
18 chapter 34.12 RCW to conduct hearings. However, the disciplining
19 authority shall make the final decision regarding disposition of the
20 license;
- 21 (9) To use individual members of the boards to direct
22 investigations. However, the member of the board shall not
23 subsequently participate in the hearing of the case;
- 24 (10) To enter into contracts for professional services determined
25 to be necessary for adequate enforcement of this chapter;
- 26 (11) To contract with licensees or other persons or organizations
27 to provide services necessary for the monitoring and supervision of
28 licensees who are placed on probation, whose professional activities
29 are restricted, or who are for any authorized purpose subject to
30 monitoring by the disciplining authority;
- 31 (12) To adopt standards of professional conduct or practice;
- 32 (13) To grant or deny license applications, and in the event of a
33 finding of unprofessional conduct by an applicant or license holder, to
34 impose any sanction against a license applicant or license holder
35 provided by this chapter;
- 36 (14) ~~((To enter into an assurance of discontinuance in lieu of
37 issuing a statement of charges or conducting a hearing. The assurance
38 shall consist of a statement of the law in question and an agreement to
39 not violate the stated provision. The applicant or license holder~~

1 ~~shall not be required to admit to any violation of the law, nor shall~~
2 ~~the assurance be construed as such an admission. Violation of an~~
3 ~~assurance under this subsection is grounds for disciplinary action;~~
4 (15)) To designate individuals authorized to sign subpoenas and
5 statements of charges.

6 **Sec. 3.** RCW 18.130.160 and 1986 c 259 s 8 are each amended to read
7 as follows:

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

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

29 Any of the actions under this section may be totally or partly
30 stayed by the disciplining authority. In determining what action is
31 appropriate, the disciplining authority must first consider what
32 sanctions are necessary to protect or compensate the public. Only
33 after such provisions have been made may the disciplining authority
34 consider and include in the order requirements designed to rehabilitate
35 the license holder or applicant. All costs associated with compliance
36 with orders issued under this section are the obligation of the license
37 holder or applicant.

1 The licensee or applicant may enter into a stipulated disposition
2 of charges that includes one or more of the sanctions of this section,
3 but only after a statement of charges has been issued and the licensee
4 has been afforded the opportunity for a hearing and has elected on the
5 record to forego such a hearing. The stipulation shall either contain
6 one or more specific findings of unprofessional conduct or inability to
7 practice, or a statement by the licensee acknowledging that evidence is
8 sufficient to justify one or more specified findings of unprofessional
9 conduct or inability to practice. The stipulation entered into
10 pursuant to this subsection shall be considered formal disciplinary
11 action for all purposes.

12 NEW SECTION. Sec. 4. A new section is added to chapter 18.130 RCW
13 to read as follows:

14 (1) Prior to serving a statement of charges under RCW 18.130.090 or
15 18.130.170, the disciplinary authority may furnish a statement of
16 allegations to the licensee or applicant along with a detailed summary
17 of the evidence relied upon to establish the allegations and a proposed
18 stipulation for informal resolution of the allegations. These
19 documents shall be exempt from public disclosure until such time as the
20 allegations are resolved either by stipulation or otherwise.

21 (2) The disciplinary authority and the applicant or licensee may
22 stipulate that the allegations may be disposed of informally in
23 accordance with this subsection. The stipulation shall contain a
24 statement of the facts leading to the filing of the complaint; the act
25 or acts of unprofessional conducted alleged to have been committed or
26 the alleged basis for determining that the applicant or licensee is
27 unable to practice with reasonable skill and safety; a statement that
28 the stipulation is not to be construed as a finding of either
29 unprofessional conduct or inability to practice; an acknowledgement
30 that a finding of unprofessional conduct or inability to practice, if
31 proven, constitutes grounds for discipline under this chapter; and an
32 agreement on the part of the licensee or applicant that the sanctions
33 set forth in RCW 18.130.160, except RCW 18.130.160 (1), (2), (6), and
34 (8), may be imposed as part of the stipulation, except that no fine may
35 be imposed but the licensee or applicant may agree to reimburse the
36 disciplinary authority the costs of investigation and processing the
37 complaint up to an amount not exceeding one thousand dollars per
38 allegation; and an agreement on the part of the disciplinary authority

1 to forego further disciplinary proceedings concerning the allegations.
2 A stipulation entered into pursuant to this subsection shall not be
3 considered formal disciplinary action.

4 (3) If the licensee or applicant declines to agree to disposition
5 of the charges by means of a stipulation pursuant to subsection (2) of
6 this section, the disciplinary authority may proceed to formal
7 disciplinary action pursuant to RCW 18.130.090 or 18.130.170.

8 (4) Upon execution of a stipulation under subsection (2) of this
9 section by both the licensee or applicant and the disciplinary
10 authority, the complaint is deemed disposed of and shall become subject
11 to public disclosure on the same basis and to the same extent as other
12 records of the disciplinary authority. Should the licensee or
13 applicant fail to pay any agreed reimbursement within thirty days of
14 the date specified in the stipulation for payment, the disciplinary
15 authority may seek collection of the amount agreed to be paid in the
16 same manner as enforcement of a fine under RCW 18.130.165.

17 **Sec. 5.** RCW 18.130.175 and 1991 c 3 s 270 are each amended to read
18 as follows:

19 (1) In lieu of disciplinary action under RCW 18.130.160 and if the
20 disciplining authority determines that the unprofessional conduct may
21 be the result of substance abuse, the disciplining authority may refer
22 the license holder to a voluntary substance abuse monitoring program
23 approved by the disciplining authority.

24 The cost of the treatment shall be the responsibility of the
25 license holder, but the responsibility does not preclude payment by an
26 employer, existing insurance coverage, or other sources. Primary
27 alcoholism or drug treatment shall be provided by approved treatment
28 facilities under RCW 70.96A.020(~~(+2)~~): PROVIDED, That nothing shall
29 prohibit the disciplining authority from approving additional services
30 and programs as an adjunct to primary alcoholism or drug treatment.
31 The disciplining authority may also approve the use of out-of-state
32 programs. Referral of the license holder to the program shall be done
33 only with the consent of the license holder. Referral to the program
34 may also include probationary conditions for a designated period of
35 time. If the license holder does not consent to be referred to the
36 program or does not successfully complete the program, the disciplining
37 authority may take appropriate action under RCW 18.130.160.

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

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

24 (4) The treatment and pretreatment records of license holders
25 referred to or voluntarily participating in approved programs shall be
26 confidential, shall be exempt from RCW 42.17.250 through 42.17.450, and
27 shall not be subject to discovery by subpoena or admissible as evidence
28 except for monitoring records reported to the disciplining authority
29 for cause as defined in subsection (3) of this section. Monitoring
30 records relating to license holders referred to the program by the
31 disciplining authority or relating to license holders reported to the
32 disciplining authority by the program for cause, shall be released to
33 the disciplining authority at the request of the disciplining
34 authority. Records held by the disciplining authority under this
35 section shall be exempt from RCW 42.17.250 through 42.17.450 and shall
36 not be subject to discovery by subpoena except by the license holder.

37 (5) "Substance abuse," as used in this section, means the
38 impairment, as determined by the disciplining authority, of a license

1 holder's professional services by an addiction to, a dependency on, or
2 the use of alcohol, legend drugs, or controlled substances.

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

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

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

13 (i) An approved monitoring treatment program;

14 (ii) The professional association operating the program;

15 (iii) Members, employees, or agents of the program or association;

16 (iv) Persons reporting a license holder as being impaired or
17 providing information about the license holder's impairment; and

18 (v) Professionals supervising or monitoring the course of the
19 impaired license holder's treatment or rehabilitation.

20 (b) The immunity provided in this section is in addition to any
21 other immunity provided by law.

22 ~~((8) In addition to health care professionals governed by this
23 chapter, this section also applies to pharmacists under chapter 18.64
24 RCW and pharmacy assistants under chapter 18.64A RCW. For that
25 purpose, the board of pharmacy shall be deemed to be the disciplining
26 authority and the substance abuse monitoring program shall be in lieu
27 of disciplinary action under RCW 18.64.160 or 18.64A.050. The board of
28 pharmacy shall adjust license fees to offset the costs of this
29 program.))~~

30 **Sec. 6.** RCW 18.130.185 and 1987 c 150 s 8 are each amended to read
31 as follows:

32 If a person or business regulated by this chapter violates RCW
33 18.130.170 or 18.130.180, the attorney general, any prosecuting
34 attorney, the ~~((director))~~ secretary, the board, or any other person
35 may maintain an action in the name of the state of Washington to enjoin
36 the person from committing the violations. The injunction shall not
37 relieve the offender from criminal prosecution, but the remedy by

1 injunction shall be in addition to the liability of the offender to
2 criminal prosecution and disciplinary action.

3 **Sec. 7.** RCW 18.130.186 and 1989 c 125 s 3 are each amended to read
4 as follows:

5 (1) To implement a substance abuse monitoring program for license
6 holders specified under RCW 18.130.040, who are impaired by substance
7 abuse, the disciplinary authority may enter into a contract with a
8 voluntary substance abuse program under RCW 18.130.175. The program
9 may include any or all of the following:

- 10 (a) Contracting with providers of treatment programs;
11 (b) Receiving and evaluating reports of suspected impairment from
12 any source;
13 (c) Intervening in cases of verified impairment;
14 (d) Referring impaired license holders to treatment programs;
15 (e) Monitoring the treatment and rehabilitation of impaired license
16 holders including those ordered by the disciplinary authority;
17 (f) Providing education, prevention of impairment, posttreatment
18 monitoring, and support of rehabilitated impaired license holders; and
19 (g) Performing other activities as agreed upon by the disciplinary
20 authority.

21 (2) A contract entered into under subsection (1) of this section
22 may be financed by a surcharge on each license issuance or renewal to
23 be collected by the department of (~~(licensing)~~) health from the license
24 holders of the same regulated health profession. These moneys shall be
25 placed in the health professions account to be used solely for the
26 implementation of the program.

27 **Sec. 8.** RCW 18.130.300 and 1984 c 279 s 21 are each amended to
28 read as follows:

29 The (~~(director)~~) secretary, members of the boards, or individuals
30 acting on their behalf are immune from suit in any action, civil or
31 criminal, based on any disciplinary proceedings or other official acts
32 performed in the course of their duties.

33 **Sec. 9.** RCW 18.135.070 and 1984 c 281 s 7 are each amended to read
34 as follows:

35 The licensing authority of health care facilities or the
36 (~~(disciplinary board)~~) disciplining authority of the delegating or

1 supervising health care practitioner shall investigate all complaints
2 or allegations of violations of proper certification of a health care
3 assistant or violations of delegation of authority or supervision. A
4 substantiated violation shall constitute sufficient cause for
5 disciplinary action by the licensing authority of a health care
6 facility or the ~~((disciplinary board))~~ disciplining authority of the
7 health care practitioner.

8 NEW SECTION. **Sec. 10.** A new section is added to chapter 18.135
9 RCW to read as follows:

10 The uniform disciplinary act, chapter 18.130 RCW, governs
11 uncertified practice, the issuance and denial of certificates, and the
12 discipline of certificate holders under this chapter. The secretary
13 shall be the disciplining authority under this chapter.

14 **Sec. 11.** RCW 18.64.160 and 1985 c 7 s 60 are each amended to read
15 as follows:

16 In addition to the grounds under RCW 18.130.170 and 18.130.180, the
17 board of pharmacy ~~((shall have the power to refuse, suspend, or~~
18 revoke)) may take disciplinary action against the license of any
19 pharmacist or intern upon proof that:

20 (1) His or her license was procured through fraud,
21 misrepresentation, or deceit;

22 (2) ~~((He or she has been convicted of a felony relating to his or~~
23 ~~her practice as a pharmacist;~~

24 (3) ~~He or she has committed any act involving moral turpitude,~~
25 ~~dishonesty, or corruption, if the act committed directly relates to the~~
26 ~~pharmacist's fitness to practice pharmacy. Upon such conviction,~~
27 ~~however, the judgment and sentence shall be conclusive evidence at the~~
28 ~~ensuing disciplinary hearing of the guilt of the respondent pharmacist~~
29 ~~of the crime described in the indictment or information, and of his or~~
30 ~~her violation of the statute upon which it is based;~~

31 (4) ~~He or she is unfit to practice pharmacy because of habitual~~
32 ~~intemperance in the use of alcoholic beverages, drugs, controlled~~
33 ~~substances, or any other substance which impairs the performance of~~
34 ~~professional duties;~~

35 (5) ~~He or she exhibits behavior which may be due to physical or~~
36 ~~mental impairment, which creates an undue risk of causing harm to him~~

1 or herself or to other persons when acting as a licensed pharmacist or
2 intern;

3 ~~(6) He or she has incompetently or negligently practiced pharmacy,~~
4 ~~creating an unreasonable risk of harm to any individual;~~

5 ~~(7) His or her legal authority to practice pharmacy, issued by any~~
6 ~~other properly constituted licensing authority of any other state, has~~
7 ~~been and is currently suspended or revoked;~~

8 ~~(8))~~ In the event that a pharmacist is determined by a court of
9 competent jurisdiction to be mentally incompetent, the pharmacist shall
10 automatically have his or her license suspended by the board upon the
11 entry of the judgment, regardless of the pendency of an appeal;

12 ~~((9))~~ (3) He or she has knowingly violated or permitted the
13 violation of any provision of any state or federal law, rule, or
14 regulation governing the possession, use, distribution, or dispensing
15 of drugs, including, but not limited to, the violation of any provision
16 of this chapter, Title 69 RCW, or rule or regulation of the board;

17 ~~((10))~~ (4) He or she has knowingly allowed any unlicensed person
18 to take charge of a pharmacy or engage in the practice of pharmacy,
19 except a pharmacy intern or pharmacy assistant acting as authorized in
20 this chapter or chapter 18.64A RCW in the presence of and under the
21 immediate supervision of a licensed pharmacist;

22 ~~((11))~~ (5) He or she has compounded, dispensed, or caused the
23 compounding or dispensing of any drug or device which contains more or
24 less than the equivalent quantity of ingredient or ingredients
25 specified by the person who prescribed such drug or device: PROVIDED,
26 HOWEVER, That nothing herein shall be construed to prevent the
27 pharmacist from exercising professional judgment in the preparation or
28 providing of such drugs or devices.

29 ~~((In any case of the refusal, suspension, or revocation of a~~
30 ~~license by said board of pharmacy under the provisions of this chapter,~~
31 ~~said board shall proceed in accordance with chapter 34.05 RCW.))~~

32 NEW SECTION. Sec. 12. A new section is added to chapter 18.64 RCW
33 to read as follows:

34 The uniform disciplinary act, chapter 18.130 RCW, governs
35 unlicensed practice, the issuance and denial of licenses of pharmacists
36 and pharmacy interns, and the discipline of licensed pharmacists and
37 pharmacy interns under this chapter.

1 **Sec. 13.** RCW 18.64A.050 and 1989 1st ex.s. c 9 s 424 are each
2 amended to read as follows:

3 In addition to the grounds under RCW 18.130.170 and 18.130.180, the
4 board of pharmacy (~~shall have the power to refuse, suspend, or~~
5 ~~revoke~~) may take disciplinary action against the certificate of any
6 pharmacy assistant upon proof that:

7 (1) His or her certificate was procured through fraud,
8 misrepresentation or deceit;

9 (2) He or she has been found guilty of any offense in violation of
10 the laws of this state relating to drugs, poisons, cosmetics or drug
11 sundries by any court of competent jurisdiction. Nothing herein shall
12 be construed to affect or alter the provisions of RCW 9.96A.020;

13 ~~(3) (He or she is unfit to perform his or her duties because of~~
14 ~~habitual intoxication or abuse of controlled substances;~~

15 ~~(4))~~ (4) He or she has exhibited gross incompetency in the performance
16 of his or her duties;

17 ~~((5))~~ (4) He or she has willfully or repeatedly violated any of
18 the rules and regulations of the board of pharmacy or of the
19 department;

20 ~~((6))~~ (5) He or she has willfully or repeatedly performed duties
21 beyond the scope of his or her certificate in violation of the
22 provisions of this chapter; or

23 ~~((7))~~ (6) He or she has impersonated a licensed pharmacist.

24 ~~((In any case of the refusal, suspension or revocation of a~~
25 ~~certificate by the board, a hearing shall be conducted in accordance~~
26 ~~with RCW 18.64.160, as now or hereafter amended, and appeal may be~~
27 ~~taken in accordance with the Administrative Procedure Act, chapter~~
28 ~~34.05 RCW.))~~

29 NEW SECTION. **Sec. 14.** A new section is added to chapter 18.64A
30 RCW to read as follows:

31 The uniform disciplinary act, chapter 18.130 RCW, governs the
32 issuance and denial of certificates and the discipline of certificants
33 under this chapter.

34 **Sec. 15.** RCW 18.72.340 and 1986 c 300 s 6 are each amended to read
35 as follows:

36 (1) Every institution or organization providing professional
37 liability insurance to physicians shall send a complete report to the

1 medical disciplinary board of all malpractice settlements, awards, or
2 payments in excess of (~~twenty~~) one hundred thousand dollars as a
3 result of a claim or action for damages alleged to have been caused by
4 an insured physician's incompetency or negligence in the practice of
5 medicine. Such institution or organization shall also report the
6 award, settlement, or payment of three or more claims during a (~~year~~)
7 five-year time period as the result of the alleged physician's
8 incompetence or negligence in the practice of medicine regardless of
9 the dollar amount of the award or payment.

10 (2) Reports required by this section shall be made within sixty
11 days of the date of the settlement or verdict. Failure to comply with
12 this section is punishable by a civil penalty not to exceed two hundred
13 fifty dollars.

14 **Sec. 16.** RCW 18.72.380 and 1991 c 3 s 170 are each amended to read
15 as follows:

16 There is hereby levied to be collected by the department of health
17 from every physician and surgeon licensed pursuant to chapter 18.71 RCW
18 and every physician assistant licensed pursuant to chapter 18.71A RCW
19 an annual medical disciplinary assessment equal to the license renewal
20 fee established under RCW 43.70.250. The assessment levied pursuant to
21 this (~~subsection~~) section is in addition to any license renewal fee
22 established under RCW 43.70.250.

23 **Sec. 17.** RCW 18.130.190 and 1991 c 3 s 271 are each amended to
24 read as follows:

25 (1) The secretary shall investigate complaints concerning practice
26 by unlicensed persons of a profession or business for which a license
27 is required by the chapters specified in RCW 18.130.040. In the
28 investigation of the complaints, the secretary shall have the same
29 authority as provided the secretary under RCW 18.130.050. (~~The~~
30 ~~secretary shall issue a cease and desist order to a person after notice~~
31 ~~and hearing and upon a determination that the person has violated this~~
32 ~~subsection.~~)

33 (2) The secretary may issue a notice of intention to issue a cease
34 and desist order to any person whom the secretary has reason to believe
35 is engaged in the unlicensed practice of a profession or business for
36 which a license is required by the chapters specified in RCW
37 18.130.040. The person to whom such notice is issued may request an

1 adjudicative proceeding to contest the charges. The request for
2 hearing must be filed within twenty days after service of the notice of
3 intention to issue a cease and desist order. The failure to request a
4 hearing constitutes a default, whereupon the secretary may enter a
5 permanent cease and desist order, which may include a civil fine. All
6 proceedings shall be conducted in accordance with chapter 34.05 RCW.

7 (3) If the secretary makes a final determination that a person has
8 engaged or is engaging in unlicensed practice, the secretary may issue
9 a cease and desist order. In addition, the secretary may impose a
10 civil fine in an amount not exceeding one thousand dollars for each day
11 upon which the person engaged in unlicensed practice of a business or
12 profession for which a license is required by one or more of the
13 chapters specified in RCW 18.130.040. The proceeds of such fines shall
14 be deposited to the health professions account.

15 (4) If the secretary makes a written finding of fact that the
16 public interest will be irreparably harmed by delay in issuing an
17 order, the secretary may issue a temporary cease and desist order. The
18 person receiving a temporary cease and desist order shall be provided
19 an opportunity for a prompt hearing. The temporary cease and desist
20 order shall remain in effect until further order of the secretary. The
21 failure to request a prompt or regularly scheduled hearing constitutes
22 a default, whereupon the secretary may enter a permanent cease and
23 desist order, which may include a civil fine.

24 (5) Neither the issuance of a cease and desist order nor payment of
25 a civil fine shall ((not)) relieve the person so practicing or
26 operating a business without a license from criminal prosecution
27 therefor, but the remedy of a cease and desist order or civil fine
28 shall be in addition to any criminal liability. The cease and desist
29 order is conclusive proof of unlicensed practice and may be enforced
30 under RCW 7.21.060. This method of enforcement of the cease and desist
31 order or civil fine may be used in addition to, or as an alternative
32 to, any provisions for enforcement of agency orders set out in chapter
33 34.05 RCW.

34 ((+2)) (6) The attorney general, a county prosecuting attorney,
35 the secretary, a board, or any person may in accordance with the laws
36 of this state governing injunctions, maintain an action in the name of
37 this state to enjoin any person practicing a profession or business for
38 which a license is required by the chapters specified in RCW 18.130.040
39 without a license from engaging in such practice or operating such

1 business until the required license is secured. However, the
2 injunction shall not relieve the person so practicing or operating a
3 business without a license from criminal prosecution therefor, but the
4 remedy by injunction shall be in addition to any criminal liability.

5 ~~((+3+))~~ (7) Unlicensed practice of a profession or operating a
6 business for which a license is required by the chapters specified in
7 RCW 18.130.040, unless otherwise exempted by law, constitutes a gross
8 misdemeanor. All fees, fines, forfeitures, and penalties collected or
9 assessed by a court because of a violation of this section shall be
10 remitted to the health professions account.

11 **Sec. 18.** RCW 18.130.165 and 1987 c 150 s 4 are each amended to
12 read as follows:

13 Where an order for payment of a fine is made as a result of a
14 hearing under RCW 18.130.100 or 18.130.190 and timely payment is not
15 made as directed in the final order, the disciplining authority may
16 enforce the order for payment in the superior court in the county in
17 which the hearing was held. This right of enforcement shall be in
18 addition to any other rights the disciplining authority may have as to
19 any licensee ordered to pay a fine but shall not be construed to limit
20 a licensee's ability to seek judicial review under RCW 18.130.140.

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

24 **Sec. 19.** RCW 18.130.050 and 1987 c 150 s 2 are each amended to
25 read as follows:

26 The disciplining authority has the following authority:

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

29 (2) To investigate all complaints or reports of unprofessional
30 conduct as defined in this chapter and to hold hearings as provided in
31 this chapter;

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

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

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

- 1 (6) In the course of investigating a complaint or report of
2 unprofessional conduct, to conduct practice reviews;
- 3 (7) To take emergency action ordering summary suspension of a
4 license, or restriction or limitation of the licensee's practice
5 pending proceedings by the disciplining authority;
- 6 (8) To use the office of administrative hearings as authorized in
7 chapter 34.12 RCW to conduct hearings. However, the disciplining
8 authority shall make the final decision regarding disposition of the
9 license;
- 10 (9) To use individual members of the boards to direct
11 investigations. However, the member of the board shall not
12 subsequently participate in the hearing of the case;
- 13 (10) To enter into contracts for professional services determined
14 to be necessary for adequate enforcement of this chapter;
- 15 (11) To contract with licensees or other persons or organizations
16 to provide services necessary for the monitoring and supervision of
17 licensees who are placed on probation, whose professional activities
18 are restricted, or who are for any authorized purpose subject to
19 monitoring by the disciplining authority;
- 20 (12) To adopt standards of professional conduct or practice;
- 21 (13) To grant or deny license applications, and in the event of a
22 finding of unprofessional conduct by an applicant or license holder, to
23 impose any sanction against a license applicant or license holder
24 provided by this chapter;
- 25 (14) To enter into an assurance of discontinuance in lieu of
26 issuing a statement of charges or conducting a hearing. The assurance
27 shall consist of a statement of the law in question and an agreement to
28 not violate the stated provision. The applicant or license holder
29 shall not be required to admit to any violation of the law, nor shall
30 the assurance be construed as such an admission. Violation of an
31 assurance under this subsection is grounds for disciplinary action;
- 32 (15) To designate individuals authorized to sign subpoenas and
33 statements of charges;
- 34 (16) To establish panels consisting of three or more members of the
35 board to perform any duty or authority within the board's jurisdiction
36 under this chapter;
- 37 (17) To review and audit the records of licensed health facilities'
38 or services' quality assurance committee decisions in which a
39 licensee's practice privilege or employment is terminated or

1 restricted. Each health facility or service shall produce and make
2 accessible to the disciplining authority the appropriate records and
3 otherwise facilitate the review and audit. Information so gained shall
4 not be subject to discovery or introduction into evidence in any civil
5 action.

6 **Sec. 20.** RCW 18.130.180 and 1991 c 332 s 34 and 1991 c 215 c 3 are
7 each reenacted and amended to read as follows:

8 The following conduct, acts, or conditions constitute
9 unprofessional conduct for any license holder or applicant under the
10 jurisdiction of this chapter:

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

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

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

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

34 (5) Suspension, revocation, or restriction of the individual's
35 license to practice the profession by competent authority in any state,
36 federal, or foreign jurisdiction, a certified copy of the order,
37 stipulation, or agreement being conclusive evidence of the revocation,
38 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;
- 12 (b) Not furnishing in writing a full and complete explanation
13 covering the matter contained in the complaint filed with the
14 disciplining authority; or
- 15 (c) Not responding to subpoenas issued by the disciplining
16 authority, whether or not the recipient of the subpoena is the accused
17 in the proceeding;
- 18 (9) Failure to comply with an order issued by the ((disciplining))
19 disciplinary authority or ((an assurance of discontinuance)) a
20 stipulation for informal disposition entered into with the
21 ((disciplining)) disciplinary authority;
- 22 (10) Aiding or abetting an unlicensed person to practice when a
23 license is required;
- 24 (11) Violations of rules established by any health agency;
- 25 (12) Practice beyond the scope of practice as defined by law or
26 rule;
- 27 (13) Misrepresentation or fraud in any aspect of the conduct of the
28 business or profession;
- 29 (14) Failure to adequately supervise auxiliary staff to the extent
30 that the consumer's health or safety is at risk;
- 31 (15) Engaging in a profession involving contact with the public
32 while suffering from a contagious or infectious disease involving
33 serious risk to public health;
- 34 (16) Promotion for personal gain of any unnecessary or
35 inefficacious drug, device, treatment, procedure, or service;
- 36 (17) Conviction of any gross misdemeanor or felony relating to the
37 practice of the person's profession. For the purposes of this
38 subsection, conviction includes all instances in which a plea of guilty
39 or nolo contendere is the basis for conviction and all proceedings in

1 which the sentence has been deferred or suspended. Nothing in this
2 section abrogates rights guaranteed under chapter 9.96A RCW;

3 (18) The procuring, or aiding or abetting in procuring, a criminal
4 abortion;

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

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

12 (21) Violation of chapter 19.68 RCW;

13 (22) Interference with an investigation or disciplinary proceeding
14 by willful misrepresentation of facts before the disciplining authority
15 or its authorized representative, or by the use of threats or
16 harassment against any patient or witness to prevent them from
17 providing evidence in a disciplinary proceeding or any other legal
18 action;

19 (23) Current misuse of:

20 (a) Alcohol;

21 (b) Controlled substances; or

22 (c) Legend drugs;

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

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

32 NEW SECTION. **Sec. 21.** The following acts or parts of acts are
33 each repealed:

34 (1) RCW 18.135.080 and 1991 c 3 s 277 & 1984 c 281 s 8;

35 (2) RCW 18.64.260 and 1987 c 202 s 184, 1969 ex.s. c 199 s 17, 1909
36 c 213 s 9, & 1899 c 121 s 17; and

1 (3) RCW 18.71A.070 and 1990 c 196 s 7, 1979 c 158 s 58, & 1975 1st
2 ex.s. c 190 s 3.

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