
HOUSE BILL 1618

State of Washington

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By Representatives Skinner, Dyer, Conway, Zellinsky, Cody, Backlund, Parlette and Clements

Read first time 02/03/97. Referred to Committee on Health Care.

1 AN ACT Relating to treatment programs for impaired physicians; and
2 amending RCW 18.71.0195, 18.71.300, 18.71.310, 18.71.320, 18.71.330,
3 18.71.340, 18.71.410, 18.71.420, 18.130.070, 18.130.080, 18.130.175,
4 and 18.130.300.

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

6 **Sec. 1.** RCW 18.71.0195 and 1994 sp.s. c 9 s 328 are each amended
7 to read as follows:

8 (1) The contents of any report file under RCW 18.130.070 shall be
9 confidential and exempt from public disclosure pursuant to chapter
10 42.17 RCW, except that it may be reviewed (a) by the licensee involved
11 or his or her counsel or authorized representative who may submit any
12 additional exculpatory or explanatory statements or other information,
13 which statements or other information shall be included in the file, or
14 (b) by a representative of the commission, or investigator thereof, who
15 has been assigned to review the activities of a licensed physician.

16 Upon a determination that a report is without merit, the
17 commission's records may be purged of information relating to the
18 report.

1 (2) Every individual, medical association, medical society,
2 hospital, medical service bureau, health insurance carrier or agent,
3 professional liability insurance carrier, professional standards review
4 organization, (~~and~~) agency of the federal, state, or local government
5 (~~shall be~~), or the entity established by RCW 18.71.300 and its
6 officers, agents, and employees are immune from civil liability,
7 whether direct or derivative, for providing information to the
8 commission under RCW 18.130.070, or for which an individual health care
9 provider has immunity under the provisions of RCW 4.24.240, 4.24.250,
10 or 4.24.260.

11 **Sec. 2.** RCW 18.71.300 and 1994 sp.s. c 9 s 329 are each amended to
12 read as follows:

13 (~~Unless the context clearly requires otherwise,~~) The definitions
14 in this section apply throughout RCW 18.71.310 through 18.71.340 unless
15 the context clearly requires otherwise.

16 (1) (~~"Committee"~~) "Entity" means a nonprofit corporation formed
17 by physicians who have expertise in the areas of (~~alcoholism~~) alcohol
18 abuse, drug abuse, (~~or~~) alcoholism, other drug addictions, and mental
19 illness and who broadly represent the physicians of the state and that
20 has been designated to perform any or all of the activities set forth
21 in RCW 18.71.310(1) (~~pursuant to rules adopted~~) by the commission
22 (~~under chapter 34.05 RCW~~).

23 (2) "Impaired" or "impairment" means the (~~presence of the diseases~~
24 ~~of alcoholism, drug abuse, mental illness~~) inability to practice
25 medicine with reasonable skill and safety to patients by reason of
26 physical or mental illness including alcohol abuse, drug abuse,
27 alcoholism, other drug addictions, or other debilitating conditions.

28 (3) "Impaired physician program" means the program for the
29 prevention, detection, intervention, (~~and~~) monitoring, and treatment
30 of impaired physicians established by the commission pursuant to RCW
31 18.71.310(1).

32 (4) "Physician" means a person licensed under this chapter, chapter
33 18.71A RCW, or a professional licensed under another chapter of Title
34 18 RCW whose disciplinary authority has a contract with the entity for
35 a program for its license holders like the impaired physician program.

36 (5) "Treatment program" means a plan of care and rehabilitation
37 services provided by those organizations or persons authorized to
38 provide such services to be approved by the commission or entity for

1 impaired physicians taking part in the impaired physician program
2 created by RCW 18.71.310.

3 **Sec. 3.** RCW 18.71.310 and 1994 sp.s. c 9 s 330 are each amended to
4 read as follows:

5 (1) The commission shall enter into a contract with the
6 ~~((committee))~~ entity to implement an impaired physician program. The
7 impaired physician program may include any or all of the following:

8 (a) ~~((Contracting))~~ Entering into relationships supportive of the
9 impaired physician program with ~~((providers of))~~ professionals who
10 provide either evaluation or treatment ~~((programs))~~ services, or both;

11 (b) Receiving and ~~((evaluating))~~ assessing reports of suspected
12 impairment from any source;

13 (c) Intervening in cases of ~~((verified))~~ actual impairment, or in
14 cases where there is reasonable cause to suspect impairment;

15 (d) Referring suspected or verified impaired physicians ~~((to))~~ for
16 evaluation or treatment ~~((programs))~~;

17 (e) Monitoring the treatment and rehabilitation of impaired
18 physicians including those ordered by the commission;

19 (f) Providing ~~((post-treatment))~~ monitoring and continuing
20 treatment and rehabilitative support of ~~((rehabilitative impaired))~~
21 physicians;

22 (g) Performing such other activities as agreed upon by the
23 commission and the ~~((committee))~~ entity; and

24 (h) Providing prevention and education services.

25 (2) A contract entered into under subsection (1) of this section
26 shall be financed by a surcharge of ~~((up to))~~ twenty-five dollars per
27 year on each license renewal or issuance of a new license to be
28 collected by the department of health from every physician and
29 ~~((surgeon))~~ physician assistant licensed under this chapter in addition
30 to other license fees and the medical discipline assessment fee
31 established under RCW ~~((18.72.380))~~ 18.72.400. These moneys shall be
32 placed in the health professions account to be used solely for the
33 implementation of the impaired physician program and are not subject to
34 postappropriations impoundment or similar holdback by the executive
35 branch of government. During the first quarter of each year, the
36 department of health shall increase this surcharge by rule to
37 compensate for inflation as found by the most recent report of the

1 United States department of labor for consumer prices for all items for
2 all urban consumers in the West.

3 **Sec. 4.** RCW 18.71.320 and 1994 sp.s. c 9 s 331 are each amended to
4 read as follows:

5 The ~~((committee))~~ entity shall develop procedures in consultation
6 with the commission for:

7 (1) Periodic reporting of statistical information regarding
8 impaired physician activity;

9 (2) Periodic disclosure and joint review of such information as the
10 commission may deem appropriate regarding reports received, contacts or
11 investigations made, and the disposition of each report~~((:—PROVIDED,~~
12 ~~That))~~. However, the ~~((committee))~~ entity shall not disclose any
13 personally identifiable information except as provided in subsections
14 (3) and (4) of this section;

15 (3) Immediate reporting to the commission of the name and results
16 of any contact or investigation regarding any suspected or verified
17 impaired physician who is reasonably believed probably to constitute an
18 imminent danger to himself or herself or to the public;

19 (4) Reporting to the commission, in a timely fashion, any suspected
20 or verified impaired physician who ~~((refuses))~~ fails to cooperate with
21 the ~~((committee, refuses))~~ entity, fails to submit to evaluation or
22 treatment, or whose impairment is not substantially alleviated through
23 treatment, ~~((and))~~ or who, in the opinion of the ~~((committee))~~ entity,
24 is probably unable to practice medicine with reasonable skill and
25 safety~~((. However, impairment, in and of itself, shall not give rise~~
26 ~~to a presumption of the inability to practice medicine with reasonable~~
27 ~~skill and safety))~~;

28 (5) Informing each participant of the impaired physician program of
29 the program procedures, the responsibilities of program participants,
30 and the possible consequences of noncompliance with the program.

31 **Sec. 5.** RCW 18.71.330 and 1994 sp.s. c 9 s 332 are each amended to
32 read as follows:

33 If the commission has reasonable cause to believe that a physician
34 is probably impaired, the commission shall cause an evaluation of such
35 physician to be conducted by the ~~((committee))~~ entity or the
36 ~~((committee's))~~ entity's designee or the commission's designee for the
37 purpose of determining if there is an impairment. The ~~((committee))~~

1 entity or appropriate designee shall report the findings of its
2 evaluation to the commission.

3 **Sec. 6.** RCW 18.71.340 and 1987 c 416 s 6 are each amended to read
4 as follows:

5 All (~~committee~~) entity records are not subject to disclosure
6 pursuant to chapter 42.17 RCW.

7 **Sec. 7.** RCW 18.71.410 and 1991 sp.s. c 13 s 17 are each amended to
8 read as follows:

9 Because it is the express purpose of this chapter to protect the
10 public health and to provide for a public agency to act as a
11 disciplinary body for members of the medical profession licensed to
12 practice medicine and surgery in this state, and because the health and
13 well-being of the people of this state are of paramount importance,
14 there is hereby created an account in the state treasury to be known as
15 the medical disciplinary account. All assessments, fines, and other
16 funds collected or received pursuant to this chapter shall be deposited
17 in the medical disciplinary account and used (~~to~~) during the time for
18 which they were appropriated unless the commission makes an affirmative
19 finding after a public hearing that the funds are not needed during
20 that time period to effectively administer and implement this chapter.

21 **Sec. 8.** RCW 18.71.420 and 1991 c 3 s 171 are each amended to read
22 as follows:

23 The secretary of health shall allocate and not impound or withhold
24 in any way all appropriated funds to accomplish the purposes of this
25 chapter.

26 **Sec. 9.** RCW 18.130.070 and 1989 c 373 s 19 are each amended to
27 read as follows:

28 (1) The disciplining authority may adopt rules requiring any
29 person, including, but not limited to, licensees, corporations,
30 organizations, health care facilities, impaired practitioner programs,
31 or voluntary substance abuse monitoring programs approved by the
32 disciplinary authority and state or local governmental agencies, to
33 report to the disciplining authority any conviction, determination, or
34 finding that a license holder has committed an act which constitutes
35 unprofessional conduct, or to report information to the disciplinary

1 authority, an impaired practitioner program, or voluntary substance
2 abuse monitoring program approved by the disciplinary authority, which
3 indicates that the license holder may not be able to practice his or
4 her profession with reasonable skill and safety to consumers as a
5 result of a mental or physical condition. To facilitate meeting the
6 intent of this section, the cooperation of agencies of the federal
7 government is requested by reporting any conviction, determination, or
8 finding that a federal employee or contractor regulated by the
9 disciplinary authorities enumerated in this chapter has committed an
10 act which constituted unprofessional conduct and reporting any
11 information which indicates that a federal employee or contractor
12 regulated by the disciplinary authorities enumerated in this chapter
13 may not be able to practice his or her profession with reasonable skill
14 and safety as a result of a mental or physical condition.

15 (2) If a person fails to furnish a required report, the
16 disciplining authority may petition the superior court of the county in
17 which the person resides or is found, and the court shall issue to the
18 person an order to furnish the required report. A failure to obey the
19 order is a contempt of court as provided in chapter 7.21 RCW.

20 (3) A person is immune from civil liability, whether direct or
21 derivative, for providing information to the disciplining authority
22 pursuant to the rules adopted under subsection (1) of this section.

23 (4) The holder of a license subject to the jurisdiction of this
24 chapter shall report to the disciplining authority any conviction,
25 determination, or finding that the licensee has committed
26 unprofessional conduct or is unable to practice with reasonable skill
27 or safety. Failure to report within thirty days of notice of the
28 conviction, determination, or finding constitutes grounds for
29 disciplinary action.

30 **Sec. 10.** RCW 18.130.080 and 1986 c 259 s 5 are each amended to
31 read as follows:

32 A person, including but not limited to consumers, licensees,
33 corporations, organizations, health care facilities, impaired
34 practitioner programs or voluntary substance abuse monitoring programs
35 approved by disciplinary authorities, and state and local governmental
36 agencies, may submit a written complaint to the disciplining authority
37 charging a license holder or applicant with unprofessional conduct and
38 specifying the grounds therefor or to report information to the

1 disciplinary authority, or voluntary substance abuse monitoring
2 program, or an impaired practitioner program approved by the
3 disciplinary authority, which indicates that the license holder may not
4 be able to practice his or her profession with reasonable skill and
5 safety to consumers as a result of a mental or physical condition. If
6 the disciplining authority determines that the complaint merits
7 investigation, or if the disciplining authority has reason to believe,
8 without a formal complaint, that a license holder or applicant may have
9 engaged in unprofessional conduct, the disciplining authority shall
10 investigate to determine whether there has been unprofessional conduct.
11 A person who files a complaint or reports information under this
12 section in good faith is immune from suit in any civil action related
13 to the filing or contents of the complaint.

14 **Sec. 11.** RCW 18.130.175 and 1993 c 367 s 3 are each amended to
15 read as follows:

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

21 The cost of the treatment shall be the responsibility of the
22 license holder, but the responsibility does not preclude payment by an
23 employer, existing insurance coverage, or other sources. Primary
24 alcoholism or drug treatment shall be provided by approved treatment
25 programs under RCW 70.96A.020(~~(:—PROVIDED, That)~~). However, nothing
26 shall prohibit the disciplining authority from approving additional
27 services and programs as an adjunct to primary alcoholism or drug
28 treatment. The disciplining authority may also approve the use of out-
29 of-state programs. Referral of the license holder to the program shall
30 be done only with the consent of the license holder. Referral to the
31 program may also include probationary conditions for a designated
32 period of time. If the license holder does not consent to be referred
33 to the program or does not successfully complete the program, the
34 disciplining authority may take appropriate action under RCW
35 18.130.160. The secretary shall adopt uniform rules for the evaluation
36 by the disciplinary authority of a relapse or program violation on the
37 part of a license holder in the substance abuse monitoring program.
38 The evaluation shall encourage program participation with additional

1 conditions, in lieu of disciplinary action, when the disciplinary
2 authority determines that the license holder is able to continue to
3 practice with reasonable skill and safety.

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

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

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

1 (5) "Substance abuse," as used in this section, means the
2 impairment, as determined by the disciplining authority, of a license
3 holder's professional services by an addiction to, a dependency on, or
4 the use of alcohol, legend drugs, or controlled substances.

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

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

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

- 15 (i) An approved monitoring treatment program;
- 16 (ii) The professional association operating the program;
- 17 (iii) Members, employees, or agents of the program or association;
- 18 (iv) Persons reporting a license holder as being impaired or
19 providing information about the license holder's impairment; and
- 20 (v) Professionals supervising or monitoring the course of the
21 impaired license holder's treatment or rehabilitation.

22 (b) The courts are strongly encouraged to impose sanctions on
23 clients and their attorneys whose allegations under this subsection are
24 not made in good faith and are without either reasonable objective,
25 substantive grounds, or both.

26 (c) The immunity provided in this section is in addition to any
27 other immunity provided by law.

28 **Sec. 12.** RCW 18.130.300 and 1994 sp.s. c 9 s 605 are each amended
29 to read as follows:

30 The secretary, members of the boards or commissions, a voluntary
31 substance abuse monitoring program or an impaired practitioner program
32 approved by a disciplinary authority, or individuals acting on their
33 behalf are immune from suit in any action, civil or criminal, based on
34 any disciplinary proceedings or other official acts performed in the
35 course of their duties.

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