

SHB 2834 - H AMD

By Representative Schual-Berke

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** The legislature finds that:

4 (1) The protection of the health and safety of the people of
5 Washington state is a paramount responsibility entrusted to the
6 state. One of the means for achieving such protection is through
7 regulation of health professionals and effective discipline of
8 those health care professionals who engage in unprofessional
9 conduct. The vast majority of health professionals are dedicated
10 to their profession, and provide quality services to those in their
11 care. However, effective mechanisms are needed to ensure that the
12 small minority of health professionals who engage in unprofessional
13 conduct are reported and disciplined in a timely and effective
14 manner.

15 (2) Jurisdiction for health professions disciplinary processes
16 is divided between the secretary of health and fourteen independent
17 boards and commissions. While the presence of a board or
18 commission consisting of members of the profession that they
19 regulate may add value to some steps of the disciplinary process,
20 in other instances their involvement may be unnecessary, or even an
21 impediment, to safeguarding the public's health and safety. It is
22 in the interests of both public health and safety and credentialed
23 health care professionals that the health professions disciplinary
24 system operate effectively and appropriately.

25 NEW SECTION. **Sec. 2.** (1) The task force on improvement of
26 health professions discipline is established. The governor must
27 appoint its members, and shall include:

28 (a) A representative of a medicare contracted professional
29 review organization in Washington state;

1 (b) One or more representatives of the University of Washington
2 school of health sciences or school of public health with expertise
3 in health professions regulation;

4 (c) A representative of the foundation for health care quality;

5 (d) Two representatives of health care professionals, including
6 one physician, neither of whom currently serve, or have served in
7 the past, on a health professions disciplinary board or commission;

8 (e) A representative of hospital-based continuous quality
9 improvement programs under RCW 70.41.200;

10 (f) A representative of a hospital peer review committee;

11 (g) The secretary of the department of health;

12 (h) A representative of the superior court judges association;

13 (i) A representative of the Washington state bar association
14 who is an attorney with expertise in defending health professionals
15 in health professions disciplinary proceedings in Washington;

16 (j) A representative of health care consumers, who does not
17 currently serve and has not in the past served, on a health
18 professions disciplinary board or commission;

19 (k) The attorney general or his or her designee; and

20 (l) A current or former public member of a disciplining
21 authority included in chapter 18.130 RCW.

22 (2) The task force shall conduct an independent review of the
23 funding of the health professions and all phases of the current
24 health professions disciplinary process, from report intake through
25 final case closure, and shall, at a minimum, examine and address
26 the following issues:

27 (a) The ability of the disciplining authorities identified in
28 RCW 18.130.040 to effectively safeguard the public from potentially
29 harmful health care practitioners while also ensuring the due
30 process rights of credentialed health care practitioners;

31 (b) The feasibility of developing a uniform performance
32 measurement system for health professions discipline;

33 (c) Whether there are components to the current health
34 professions discipline system that serve as impediments to
35 improving the quality of health professions discipline, including
36 consideration of:

37 (i) The value of boards and commissions in the health
38 professions disciplinary process; and

1 (ii) The respective roles of the secretary and boards and
2 commissions in health professions disciplinary functions;

3 (d) The feasibility of allowing law enforcement agencies to
4 share information from criminal investigations of credentialed
5 health care providers regardless of whether the provider was not
6 ultimately convicted;

7 (e) The extent to which investigation, charging, and
8 sanctioning decisions are consistently applied across and within
9 each of the disciplining authorities;

10 (f) The merits of limiting the public disclosure of certain
11 information related to the health professions disciplinary process
12 including complaint closure without investigation, complaint
13 closure without after investigation, and findings after
14 adjudication of no violation of the uniform disciplinary act;

15 (g) The extent to which sanctions deviate from advisory
16 guidelines regarding sanctions and the circumstances behind those
17 deviations; and

18 (h) Alternative fee structures for health care professionals to
19 simplify funding and the use of those funds across all health care
20 professions.

21 (3) The task force may establish technical advisory committees
22 to assist in its efforts, and shall provide opportunities for
23 interested parties to comment upon the task force's findings and
24 recommendations prior to being finalized.

25 (4) Staff support to the task force shall be provided by the
26 department of health and the office of financial management.

27 (5) The task force shall submit its report and recommendations
28 for improvement of health professions discipline to the relevant
29 committees of the legislature and the governor by October 1, 2005.

30 (6) Nothing in this act limits the secretary of health's
31 authority to modify the internal processes or organizational
32 framework of the department.

33 (7) Members of the task force shall be reimbursed for travel
34 expenses as provided in RCW 43.03.050 and 43.03.060.

35 **Sec. 3.** RCW 4.24.260 and 1994 sp.s. c 9 s 701 are each amended
36 to read as follows:

37 (~~Physicians licensed under chapter 18.71 RCW, dentists~~
38 ~~licensed under chapter 18.32 RCW, and pharmacists licensed under~~

1 ~~chapter 18.64 RCW~~) Any member of a health profession listed under
2 RCW 18.130.040 who, in good faith, makes a report, files charges,
3 or presents evidence against another member of ((their)) a health
4 profession based on the claimed ((incompetency or gross
5 misconduct)) unprofessional conduct as provided in RCW 18.130.180
6 or inability to practice with reasonable skill and safety to
7 consumers by reason of any physical or mental condition as provided
8 in RCW 18.130.170 of such person before the ((medical quality
9 assurance commission established under chapter 18.71 RCW, in a
10 proceeding under chapter 18.32 RCW, or to the board of pharmacy
11 under RCW 18.64.160)) agency, board, or commission responsible for
12 disciplinary activities for the person's profession under chapter
13 18.130 RCW, shall be immune from civil action for damages arising
14 out of such activities. A person prevailing upon the good faith
15 defense provided for in this section is entitled to recover
16 expenses and reasonable attorneys' fees incurred in establishing
17 the defense.

18 **Sec. 4.** RCW 18.71.0193 and 1994 sp.s. c 9 s 327 are each
19 amended to read as follows:

20 (1) A ~~((licensed health care professional))~~ physician licensed
21 under this chapter shall report to the commission when he or she
22 has personal knowledge that a practicing physician has either
23 committed an act or acts which may constitute statutorily defined
24 unprofessional conduct or that a practicing physician may be unable
25 to practice medicine with reasonable skill and safety to patients
26 by reason of illness, drunkenness, excessive use of drugs,
27 narcotics, chemicals, or any other type of material, or as a result
28 of any mental or physical conditions.

29 (2) Reporting under this section is not required by:

30 (a) An appropriately appointed peer review committee member of
31 a licensed hospital or by an appropriately designated professional
32 review committee member of a county or state medical society during
33 the investigative phase of their respective operations if these
34 investigations are completed in a timely manner; or

35 (b) A treating licensed health care professional of a physician
36 currently involved in a treatment program as long as the physician
37 patient actively participates in the treatment program and the

1 physician patient's impairment does not constitute a clear and
2 present danger to the public health, safety, or welfare.

3 (3) The commission may impose disciplinary sanctions, including
4 license suspension or revocation, on any (~~health care professional~~
5 ~~subject to the jurisdiction of the commission~~) physician licensed
6 under this chapter who has failed to comply with this section.

7 (4) Every physician licensed under this chapter who reports to
8 the commission as required under subsection (1) of this section in
9 good faith is immune from civil liability for damages arising out
10 of the report, whether direct or derivative. A person prevailing
11 upon the defense provided for in this section is entitled to
12 recover expenses and reasonable attorneys' fees incurred in
13 establishing the defense.

14 **Sec. 5.** RCW 18.130.010 and 1994 sp.s. c 9 s 601 are each
15 amended to read as follows:

16 It is the intent of the legislature to strengthen and
17 consolidate disciplinary and licensure procedures for the licensed
18 health and health-related professions and businesses by providing
19 a uniform disciplinary act with standardized procedures for the
20 licensure of health care professionals and the enforcement of laws
21 the purpose of which is to (~~assure the public of the adequacy of~~
22 ~~professional competence and conduct in the healing arts~~) reduce
23 unprofessional conduct and unsafe practices in health care, protect
24 the public health, safety, and welfare, and promote patient safety.

25 It is also the intent of the legislature that all health and
26 health-related professions newly credentialed by the state come
27 under the Uniform Disciplinary Act.

28 Further, the legislature declares that the addition of public
29 members on all health care commissions and boards can give both the
30 state and the public, which it has a paramount statutory
31 responsibility to protect, assurances of accountability and
32 confidence in the various practices of health care.

33 **Sec. 6.** RCW 18.130.180 and 1995 c 336 s 9 are each amended to
34 read as follows:

35 The following conduct, acts, or conditions constitute
36 unprofessional conduct for any license holder or applicant under
37 the jurisdiction of this chapter:

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

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

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

18 (4) Incompetence, negligence, or malpractice which results in
19 injury to a patient or which creates an unreasonable risk that a
20 patient may be harmed. The use of a nontraditional treatment by
21 itself shall not constitute unprofessional conduct, provided that
22 it does not result in injury to a patient or create an unreasonable
23 risk that a patient may be harmed;

24 (5) Suspension, revocation, or restriction of the individual's
25 license to practice any health care profession by competent
26 authority in any state, federal, or foreign jurisdiction, a
27 certified copy of the order, stipulation, or agreement being
28 conclusive evidence of the revocation, suspension, or restriction.
29 Full faith and credit will be extended to the action by the
30 competent authority, even if procedures or standards of proof vary
31 in the other jurisdiction;

32 (6) The possession, use, prescription for use, or distribution
33 of controlled substances or legend drugs in any way other than for
34 legitimate or therapeutic purposes, diversion of controlled
35 substances or legend drugs, the violation of any drug law, or
36 prescribing controlled substances for oneself;

37 (7) Violation of any state or federal statute or administrative
38 rule regulating the profession in question, including any statute

1 or rule defining or establishing standards of patient care or
2 professional conduct or practice;

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

4 (a) Not furnishing any papers or documents;

5 (b) Not furnishing in writing a full and complete explanation
6 covering the matter contained in the complaint filed with the
7 disciplining authority;

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

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

14 (9) Failure to comply with an order issued by the disciplining
15 authority or a stipulation for informal disposition entered into
16 with the disciplining authority;

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

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

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

22 (13) Misrepresentation or fraud in any aspect of the conduct of
23 the business or profession;

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

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

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

31 (17) Conviction of any gross misdemeanor or felony relating to
32 the practice of the person's profession. For the purposes of this
33 subsection, conviction includes all instances in which a plea of
34 guilty or nolo contendere is the basis for conviction and all
35 proceedings in which the sentence has been deferred or suspended.
36 Nothing in this section abrogates rights guaranteed under chapter
37 9.96A RCW;

38 (18) The procuring, or aiding or abetting in procuring, a
39 criminal abortion;

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

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

8 (21) Violation of chapter 19.68 RCW;

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

17 (23) Current misuse of:

18 (a) Alcohol;

19 (b) Controlled substances; or

20 (c) Legend drugs;

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

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

31 **Sec. 7.** RCW 18.130.900 and 1986 c 259 s 14 are each amended to
32 read as follows:

33 (1) This chapter shall be known and cited as the uniform
34 disciplinary act.

35 (2) This chapter applies to any conduct, acts, or conditions
36 occurring on or after June 11, 1986.

37 (3) This chapter does not apply to or govern the construction
38 of and disciplinary action for any conduct, acts, or conditions

1 occurring prior to June 11, 1986. Such conduct, acts, or
2 conditions must be construed and disciplinary action taken
3 according to the provisions of law existing at the time of the
4 occurrence in the same manner as if this chapter had not been
5 enacted.

6 (4) The amendments to chapter 18.130 RCW in sections 5 and 6 of
7 this act are clarifying amendments and should not be construed as
8 a change in the construction and application of chapter 18.130
9 RCW."

10 Correct the title.

EFFECT: Requires the task force to study the consistency of investigation, charging and sanctioning decisions across and within professions. Requires the task force to study the merits of limiting the public disclosure of information related to certain steps of the disciplinary process. Specifies that provisions of the act related to the intent of the uniform disciplinary act and the application of out-of-state actions against a health care professional's license despite varying standards of proof are to be construed as clarifications to and not changes in the construction of the uniform disciplinary act.