

ESHB 2834 - S COMM AMD

By Committee on Health & Long-Term Care

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

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

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

27 (a) A representative of a medicare contracted professional review
28 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 in
3 health professions regulation;

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

5 (d) Four representatives of a broad range of different types of
6 health care professionals, including one physician, none of whom
7 currently serve, or have served in the past, on a health professions
8 disciplinary board or commission;

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

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

12 (g) The secretary of the department of health or the secretary's
13 designee;

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

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

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

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

22 (l) Three members of the public, one of whom is a current or former
23 public member of a disciplining authority included in chapter 18.130
24 RCW.

25 (2) The task force shall conduct an independent review of the
26 funding of the health professions identified in RCW 18.130.040 and the
27 allocation of resources to ensure equitable and consistent outcomes for
28 all professions in the conduct of activities authorized under the
29 uniform disciplinary act, chapter 18.130 RCW. The task force shall
30 review all phases of the current health professions disciplinary
31 process, from report intake through final case closure, and shall, at
32 a minimum, examine and address the following issues:

33 (a) The ability of the disciplining authorities identified in RCW
34 18.130.040 to effectively safeguard the public from potentially harmful
35 health care practitioners by timely case disposition while also
36 ensuring the due process rights of credentialed health care
37 practitioners;

- 1 (b) The feasibility of developing a uniform performance measurement
2 system for health professions discipline;
- 3 (c) Whether there are components to the current health professions
4 discipline system that serve as impediments to improving the quality of
5 health professions discipline, including consideration of:
- 6 (i) The value of boards and commissions in the health professions
7 disciplinary process; and
- 8 (ii) The respective roles of the secretary and boards and
9 commissions in health professions disciplinary functions;
- 10 (d) The feasibility of allowing law enforcement agencies to share
11 information from criminal investigations of credentialed health care
12 providers regardless of whether the provider was not ultimately
13 convicted;
- 14 (e) The extent to which investigation, charging, and sanctioning
15 decisions are consistently applied across and within each of the
16 disciplining authorities;
- 17 (f) The merits of limiting the public disclosure of certain
18 information related to the health professions disciplinary process
19 including complaint closure without investigation, complaint closure
20 after investigation, and findings after adjudication of no violation of
21 the uniform disciplinary act;
- 22 (g) The extent to which sanctions deviate from advisory guidelines
23 regarding sanctions and the circumstances behind those deviations;
- 24 (h) Alternative fee structures for health care professionals to
25 simplify funding and the use of those funds across all health care
26 professions;
- 27 (i) The feasibility of the secretary of the department of health
28 investigating and making case disposition decisions to ensure
29 disciplinary consistency across and within professions;
- 30 (j) The extent to which gathering necessary evidence during
31 investigations is impeded by current statutory constraints;
- 32 (k) The feasibility of allowing department of health staff
33 attorneys to serve as attorneys of record in the prosecution of health
34 care practitioners as a means to conserve resources and to expedite the
35 disciplinary process; and
- 36 (l) The feasibility of allowing the department of health to freely
37 exchange confidential health care and health care practitioner

1 information with other governmental agencies when necessary in the
2 discharge of the governmental agencies' statutorily mandated
3 activities.

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

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

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

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

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

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

20 (~~Physicians licensed under chapter 18.71 RCW, dentists licensed~~
21 ~~under chapter 18.32 RCW, and pharmacists licensed under chapter 18.64~~
22 ~~RCW~~) Any member of a health profession listed under RCW 18.130.040
23 who, in good faith, makes a report, files charges, or presents evidence
24 against another member of ((their)) a health profession based on the
25 claimed ((incompetency or gross misconduct)) unprofessional conduct as
26 provided in RCW 18.130.180 or inability to practice with reasonable
27 skill and safety to consumers by reason of any physical or mental
28 condition as provided in RCW 18.130.170 of such person before the
29 ~~((medical quality assurance commission established under chapter 18.71~~
30 ~~RCW, in a proceeding under chapter 18.32 RCW, or to the board of~~
31 ~~pharmacy under RCW 18.64.160)) agency, board, or commission responsible~~
32 for disciplinary activities for the person's profession under chapter
33 18.130 RCW, shall be immune from civil action for damages arising out
34 of such activities. A person prevailing upon the good faith defense
35 provided for in this section is entitled to recover expenses and
36 reasonable attorneys' fees incurred in establishing the defense.

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

3 (1) A (~~licensed health care professional~~) physician licensed
4 under this chapter shall report to the commission when he or she has
5 personal knowledge that a practicing physician has either committed an
6 act or acts which may constitute statutorily defined unprofessional
7 conduct or that a practicing physician may be unable to practice
8 medicine with reasonable skill and safety to patients by reason of
9 illness, drunkenness, excessive use of drugs, narcotics, chemicals, or
10 any other type of material, or as a result of any mental or physical
11 conditions.

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

13 (a) An appropriately appointed peer review committee member of a
14 licensed hospital or by an appropriately designated professional review
15 committee member of a county or state medical society during the
16 investigative phase of their respective operations if these
17 investigations are completed in a timely manner; or

18 (b) A treating licensed health care professional of a physician
19 currently involved in a treatment program as long as the physician
20 patient actively participates in the treatment program and the
21 physician patient's impairment does not constitute a clear and present
22 danger to the public health, safety, or welfare.

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

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

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

35 It is the intent of the legislature to strengthen and consolidate
36 disciplinary and licensure procedures for the licensed health and

1 health-related professions and businesses by providing a uniform
2 disciplinary act with standardized procedures for the licensure of
3 health care professionals and the enforcement of laws the purpose of
4 which is to (~~assure the public of the adequacy of professional~~
5 ~~competence and conduct in the healing arts~~) reduce unprofessional
6 conduct and unsafe practices in health care, protect the public health,
7 safety, and welfare, and promote patient safety.

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

11 Further, the legislature declares that the addition of public
12 members on all health care commissions and boards can give both the
13 state and the public, which it has a paramount statutory responsibility
14 to protect, assurances of accountability and confidence in the various
15 practices of health care.

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

18 The following conduct, acts, or conditions constitute
19 unprofessional conduct for any license holder or applicant under the
20 jurisdiction of this chapter:

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

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

- 1 (3) All advertising which is false, fraudulent, or misleading;
- 2 (4) Incompetence, negligence, or malpractice which results in
3 injury to a patient or which creates an unreasonable risk that a
4 patient may be harmed. The use of a nontraditional treatment by itself
5 shall not constitute unprofessional conduct, provided that it does not
6 result in injury to a patient or create an unreasonable risk that a
7 patient may be harmed;
- 8 (5) Suspension, revocation, or restriction of the individual's
9 license to practice any health care profession by competent authority
10 in any state, federal, or foreign jurisdiction, a certified copy of the
11 order, stipulation, or agreement being conclusive evidence of the
12 revocation, suspension, or restriction. Full faith and credit will be
13 extended to the action by the competent authority, even if procedures
14 or standards of proof vary in the other jurisdiction;
- 15 (6) The possession, use, prescription for use, or distribution of
16 controlled substances or legend drugs in any way other than for
17 legitimate or therapeutic purposes, diversion of controlled substances
18 or legend drugs, the violation of any drug law, or prescribing
19 controlled substances for oneself;
- 20 (7) Violation of any state or federal statute or administrative
21 rule regulating the profession in question, including any statute or
22 rule defining or establishing standards of patient care or professional
23 conduct or practice;
- 24 (8) Failure to cooperate with the disciplining authority by:
- 25 (a) Not furnishing any papers or documents;
- 26 (b) Not furnishing in writing a full and complete explanation
27 covering the matter contained in the complaint filed with the
28 disciplining authority;
- 29 (c) Not responding to subpoenas issued by the disciplining
30 authority, whether or not the recipient of the subpoena is the accused
31 in the proceeding; or
- 32 (d) Not providing reasonable and timely access for authorized
33 representatives of the disciplining authority seeking to perform
34 practice reviews at facilities utilized by the license holder;
- 35 (9) Failure to comply with an order issued by the disciplining
36 authority or a stipulation for informal disposition entered into with
37 the disciplining authority;

- 1 (10) Aiding or abetting an unlicensed person to practice when a
2 license is required;
- 3 (11) Violations of rules established by any health agency;
- 4 (12) Practice beyond the scope of practice as defined by law or
5 rule;
- 6 (13) Misrepresentation or fraud in any aspect of the conduct of the
7 business or profession;
- 8 (14) Failure to adequately supervise auxiliary staff to the extent
9 that the consumer's health or safety is at risk;
- 10 (15) Engaging in a profession involving contact with the public
11 while suffering from a contagious or infectious disease involving
12 serious risk to public health;
- 13 (16) Promotion for personal gain of any unnecessary or
14 inefficacious drug, device, treatment, procedure, or service;
- 15 (17) Conviction of any gross misdemeanor or felony relating to the
16 practice of the person's profession. For the purposes of this
17 subsection, conviction includes all instances in which a plea of guilty
18 or nolo contendere is the basis for conviction and all proceedings in
19 which the sentence has been deferred or suspended. Nothing in this
20 section abrogates rights guaranteed under chapter 9.96A RCW;
- 21 (18) The procuring, or aiding or abetting in procuring, a criminal
22 abortion;
- 23 (19) The offering, undertaking, or agreeing to cure or treat
24 disease by a secret method, procedure, treatment, or medicine, or the
25 treating, operating, or prescribing for any health condition by a
26 method, means, or procedure which the licensee refuses to divulge upon
27 demand of the disciplining authority;
- 28 (20) The willful betrayal of a practitioner-patient privilege as
29 recognized by law;
- 30 (21) Violation of chapter 19.68 RCW;
- 31 (22) Interference with an investigation or disciplinary proceeding
32 by willful misrepresentation of facts before the disciplining authority
33 or its authorized representative, or by the use of threats or
34 harassment against any patient or witness to prevent them from
35 providing evidence in a disciplinary proceeding or any other legal
36 action, or by the use of financial inducements to any patient or

1 witness to prevent or attempt to prevent him or her from providing
2 evidence in a disciplinary proceeding;

3 (23) Current misuse of:

4 (a) Alcohol;

5 (b) Controlled substances; or

6 (c) Legend drugs;

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

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

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

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

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

22 (3) This chapter does not apply to or govern the construction of
23 and disciplinary action for any conduct, acts, or conditions occurring
24 prior to June 11, 1986. Such conduct, acts, or conditions must be
25 construed and disciplinary action taken according to the provisions of
26 law existing at the time of the occurrence in the same manner as if
27 this chapter had not been enacted.

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

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By Committee on Health & Long-Term Care

1 On page 1, line 1 of the title, after "discipline;" strike the
2 remainder of the title and insert "amending RCW 4.24.260, 18.71.0193,
3 18.130.010, 18.130.180, and 18.130.900; and creating new sections."

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