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## Health Care Committee

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# HB 2834

**Brief Description:** Improving the discipline of health professions.

**Sponsors:** Representatives Schual-Berke, Kagi, Cody, Lantz, Linville, Morrell, Wallace, Kenney, O'Brien, Miloscia, Sommers, Rockefeller and Darneille.

### Brief Summary of Bill

- Creates the Task Force on Improvement of Health Professions Discipline to review ways to improve the disciplinary process related to licensed health care providers.
- Provides immunity from civil actions to health care providers who report another provider's unprofessional conduct or lack of capacity to practice safely.
- Declares that the standard of proof in disciplinary actions involving the revocation of a physician's license is clear, cogent, and convincing evidence and that for all other actions against physicians and all other licensed health care providers it is proof by a preponderance of the evidence.

**Hearing Date:** 1/27/04

**Staff:** Chris Blake (786-7392).

### **Background:**

#### Health Professions Boards and Commissions

The Uniform Disciplinary Act (UDA) governs disciplinary actions for all 57 categories of credentialed health care providers. The UDA defines acts of unprofessional conduct, establishes sanctions for such acts, and provides general procedures for addressing complaints and taking disciplinary actions against a credentialed health care provider. Responsibilities in the disciplinary process are divided between the Secretary of Health (Secretary) and the 16 health professions boards and commissions according to the profession that the health care provider is a member of and the relevant step in the disciplinary process.

After investigating a complaint or report of unprofessional conduct, the Secretary or the board or commission must decide what disciplinary action is warranted by the evidence. The case may be closed without further action, pursued through an informal action in the form of a statement of allegations, or pursued through a formal action in the form of a statement of charges. Upon a

finding of an act of unprofessional conduct, the Secretary or the board or commission decides which sanctions should be ordered.

### Standards of Proof

In civil actions, the party bringing the law suit bears the burden of proving his or her case by a preponderance of the evidence. This standard is generally considered to mean that a proposition is more likely true than not. In criminal actions, the prosecution must prove the case beyond a reasonable doubt, a much higher standard. Standard jury instructions define a "reasonable doubt" as "such a doubt as would exist in the mind of a reasonable person after fully, fairly and carefully considering all of the evidence or lack of evidence." There is a third standard that is used in certain situations where it has been determined that the proceeding, while not criminal, demands a higher burden than a preponderance of the evidence. This standard, "clear, cogent, and convincing evidence," generally means that the facts are highly probable. It is an intermediate standard between preponderance of the evidence and beyond a reasonable doubt.

Until recently, disciplinary actions against licensed health care providers required that a disciplining authority prove its case by a preponderance of the evidence. A 2001 decision by the Washington State Supreme Court (Court), however, held that the preponderance of the evidence standard does not afford a physician with the appropriate level of procedural due process rights. At issue in the case was a physician facing the revocation of his license to practice medicine. The Court held that because the interest of a physician in a professional disciplinary proceeding is greater than just the potential loss of money, as in a regular civil trial, the preponderance of the evidence standard is inadequate for protecting a physician from an erroneous deprivation of a property interest. In finding that a clear, cogent, and convincing standard of evidence should be used in the disciplinary proceeding, the Court noted the quasi-criminal nature of disciplinary hearings and physicians' substantial interest in the practice of their profession, their reputation, their livelihood, and their financial and emotional future.

### **Summary of Bill:**

#### Task Force on Improvement of Health Professions Discipline

The "Task Force on Improvement of Health Professions Discipline" (Task Force) is established to address ways to improve the discipline of health professionals. The Task Force shall review the funding of the health professions and all phases of the disciplinary process. Specific issues that must be addressed include:

- The ability of disciplining authorities to protect the public while ensuring due process rights;
- The creation of a performance measurement system for health professions discipline;
- Impediments to improving the health profession disciplinary system including the value of the health professions boards and commissions in the process and the roles of the Secretary of Health and the boards and commissions;
- Partnerships with law enforcement agencies; and
- Alternative fee structures for health care professionals.

Members of the Task Force shall be appointed by the Governor and the membership shall include the Secretary of Health and representatives of: a medicare-contracted professional review organization, the University of Washington, the Foundation for Health Care Quality, health care professionals, a hospital-based quality improvement program, a hospital peer review committee,

the Superior Court Judges Association, the Washington State Bar Association, and consumers. The Task Force must report its recommendations to the Legislature by October 1, 2005.

### Health Provider Reporting

Any health care professional who makes a good faith report, files charges, or presents evidence to a disciplining authority against another member of a health profession relating to alleged unprofessional conduct or inability to practice safely due to a physical or mental condition is immune from a civil action for damages resulting from those activities. If a person brings a civil action challenging the immunity, and the court determines that the immunity applies, the reporting health care professional may recover expenses and reasonable attorney fees and statutory damages of \$25,000.

Physicians who make a good faith report to the Medical Quality Assurance Commission against another physician relating to alleged unprofessional conduct or inability to practice safely due to a physical or mental condition, as mandated by law, are immune from a civil action for damages resulting from the reporting. If a person brings a civil action despite the immunity and the court determines that the immunity applies, the reporting physician may recover expenses and reasonable attorney fees and statutory damages of \$10,000.

### Standard of Proof in Disciplinary Actions

The standard of proof in disciplinary actions against physicians and osteopathic physicians is proof by a preponderance of the evidence, except where the disciplinary action involves the revocation of the their license, in which case the standard is clear, cogent, and convincing evidence. The standard of proof in disciplinary actions involving all other licensed health care providers is proof by a preponderance of the evidence.

Individuals who have had a health care provider license suspended or revoked must prove by a preponderance of the evidence that the license should be reinstated. When considering a petition for reinstatement, the disciplining authority may consider several factors. These factors include:

- The person's character, standing, and reputation prior to suspension or revocation;
- The ethical standards observed by the person;
- The nature and character of the charges that were the cause of the suspension or revocation;
- The sufficiency of the action relative to the charge and whether or not restitution was made;
- The time elapsed and the person's attitude and conduct since the suspension or revocation;
- The person's previous competency level and expected competency if the license is reinstated; and
- The person's sincerity, frankness, and truthfulness in discussing these factors.

**Appropriation:** None.

**Fiscal Note:** Requested on January 21, 2004.

**Effective Date:** The bill takes effect 90 days after adjournment of session in which bill is passed.