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**Health Care Committee**

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**HB 2879**

**Brief Description:** Revising the department of health's health professions disciplinary authority.

**Sponsors:** Representatives Cody, Campbell and Schual-Berke; by request of Department of Health.

**Brief Summary of Bill**

- Authorizes Department of Health investigators to copy records of health care providers when delay may result in the destruction or alteration of the records.
- Authorizes Department of Health investigators to obtain a court-issued administrative investigation warrant to investigate a location or seize property.
- Creates a course of action for a disciplining authority to use in matters involving licensed health care providers who may default in a disciplinary action.

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

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

**Background:**

Administrative Subpoenas and Searches

The Fourth Amendment to the United States Constitution prohibits "unreasonable searches and seizures." Article I, Section 7 of the Washington State Constitution requires "authority of law" before a person may "be disturbed in private affairs, or his home invaded." These protections generally require the issuance of a search warrant upon probable cause by a detached and neutral party such as a judge, except in limited circumstances. These protections also apply when administrative agencies conduct the search or seizure.

The Secretary of Health (Secretary) has statutory authority to issue subpoenas to require a witness to produce documents, articles, and instruments related to a matter under investigation. Such investigative subpoenas are enforceable by a court order if the subpoena is properly issued, the investigation is being conducted for a lawful purpose, and the materials to be produced are specified and relevant to the investigation. If the court order is not followed, the witness may be held in contempt of court.

The Secretary is also authorized to investigate, examine, sample, or inspect any article or condition that constitutes a threat to the public health. Such threats include outbreaks of communicable disease, food poisoning, contaminated water supplies, and all other matters injurious to public health. The authority allows the Secretary to inspect documents and articles used in connection with a business related to the investigation. In addition, the Secretary may have free and unimpeded access to all buildings, yards, warehouses, and other facilities or places. In certain instances where the Secretary has been denied access, he or she may apply to a court for an administrative inspection warrant.

### Statements of Charges

When the Secretary or a health professions board or commission determines upon investigation that there has been a violation of the Uniform Disciplinary Act, they may file a statement of charges. Upon being served with a statement of charges, a licensed health care provider or applicant may request a hearing within 20 days to contest the charges. A 60-day extension may be granted for good cause. If no hearing is requested, then the matter is considered to be in default and the Secretary or board or commission may enter a decision based on the facts determined from the investigation.

### **Summary of Bill:**

#### Authority to Obtain Records and Physical Evidence

The Secretary of Health (Secretary) is authorized to obtain copies of health care information related to matters under investigation. If there is reasonable cause to believe that the records may be destroyed or altered, investigators are authorized to enter the facility where the records are kept, during regular business hours, and immediately make copies of the records.

The Secretary is authorized to obtain an administrative investigation warrant when it is necessary to obtain physical evidence during an investigation. The warrant is to be obtained from a court upon an oath or affirmation showing probable cause. Probable cause is defined as a valid public interest in the enforcement of the Uniform Disciplinary Act that is sufficient to justify administrative investigation of the location at issue.

The administrative investigation warrant must specify: the location to be inspected, the purpose of the investigation, and the type of property to be inspected. In addition, the warrant must: identify the grounds for issuance and the name of each person whose affidavit supports the warrant; be directed to a person authorized to execute it and command that person to inspect the property and seize any specified property; identify any items or types of property to be removed; and direct that the warrant is to be served during regular business hours and identify the judge to whom it must be returned.

Administrative investigation warrants must be executed and returned to the identified judge within 10 days of its issuance, unless court permits additional time. If property is removed pursuant to a warrant, a copy of the warrant and a receipt for the property will be given to the owner of the property.

#### Alternatives to Statements of Charges

As an alternative to a statement of charges, the disciplining authority may issue a written notice of action. The written notice of action shall state the reasons for the action and impose a specified sanction. If the person who is the subject of the action requests an adjudicative proceeding within 20 days of being served, then the action has no effect and the matter will be determined by a hearing. The person may also request a 60-day extension for good cause. If no request for an adjudicative hearing is made before the time to respond, then the action becomes effective and the sanction may be imposed without a hearing.

**Appropriation:** None.

**Fiscal Note:** Requested on January 22, 2004.

**Effective Date:** The bill takes effect 90 days after adjournment of session in which bill is passed, except for section 4, relating to practice without a license, which takes effect January 1, 2005.