
HOUSE BILL 2355

State of Washington

58th Legislature

2004 Regular Session

By Representatives Hinkle and Dickerson

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Committee on Health Care.

1 AN ACT Relating to complementary and alternative health care
2 practitioners; amending RCW 18.130.190; adding a new section to chapter
3 18.130 RCW; creating a new section; and providing an effective date.

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

5 NEW SECTION. **Sec. 1.** (1) Based upon a comprehensive report by the
6 national institute of medicine and other studies, including a study
7 published by the *New England Journal of Medicine*, it is evident that
8 millions of Americans are presently receiving a substantial volume of
9 health care services from complementary and alternative health care
10 practitioners. Those studies further indicate that individuals
11 utilizing complementary and alternative health care services cut across
12 a wide variety of age, ethnic, socioeconomic, and other demographic
13 categories.

14 (2) Notwithstanding the widespread utilization of complementary and
15 alternative medical services by Washingtonians, the provision of many
16 of these services may be in technical violation of the uniform
17 disciplinary act, chapter 18.130 RCW. Complementary and alternative
18 health care practitioners could therefore be subject to fines,

1 penalties, and the restriction of their practice under the uniform
2 disciplinary act even though there is no demonstration that their
3 practices are harmful to the public.

4 (3) The legislature intends, by enactment of this act, to allow
5 access by Washington residents to complementary and alternative health
6 care practitioners who are not providing services that require medical
7 training and credentials. The legislature further finds that, with
8 proper disclosure, these nonmedical complementary and alternative
9 services do not pose a known risk to the health and safety of
10 Washington residents, and that restricting access to those services is
11 not warranted.

12 **Sec. 2.** RCW 18.130.190 and 2003 c 53 s 141 are each amended to
13 read as follows:

14 (1) Except as provided in section 3 of this act, the secretary
15 shall investigate complaints concerning practice by unlicensed persons
16 of a profession or business for which a license is required by the
17 chapters specified in RCW 18.130.040. In the investigation of the
18 complaints, the secretary shall have the same authority as provided the
19 secretary under RCW 18.130.050.

20 (2) The secretary may issue a notice of intention to issue a cease
21 and desist order to any person whom the secretary has reason to believe
22 is engaged in the unlicensed practice of a profession or business for
23 which a license is required by the chapters specified in RCW
24 18.130.040. The person to whom such notice is issued may request an
25 adjudicative proceeding to contest the charges. The request for
26 hearing must be filed within twenty days after service of the notice of
27 intention to issue a cease and desist order. The failure to request a
28 hearing constitutes a default, whereupon the secretary may enter a
29 permanent cease and desist order, which may include a civil fine. All
30 proceedings shall be conducted in accordance with chapter 34.05 RCW.

31 (3) If the secretary makes a final determination that a person has
32 engaged or is engaging in unlicensed practice, the secretary may issue
33 a cease and desist order. In addition, the secretary may impose a
34 civil fine in an amount not exceeding one thousand dollars for each day
35 upon which the person engaged in unlicensed practice of a business or
36 profession for which a license is required by one or more of the

1 chapters specified in RCW 18.130.040. The proceeds of such fines shall
2 be deposited to the health professions account.

3 (4) If the secretary makes a written finding of fact that the
4 public interest will be irreparably harmed by delay in issuing an
5 order, the secretary may issue a temporary cease and desist order. The
6 person receiving a temporary cease and desist order shall be provided
7 an opportunity for a prompt hearing. The temporary cease and desist
8 order shall remain in effect until further order of the secretary. The
9 failure to request a prompt or regularly scheduled hearing constitutes
10 a default, whereupon the secretary may enter a permanent cease and
11 desist order, which may include a civil fine.

12 (5) Neither the issuance of a cease and desist order nor payment of
13 a civil fine shall relieve the person so practicing or operating a
14 business without a license from criminal prosecution therefor, but the
15 remedy of a cease and desist order or civil fine shall be in addition
16 to any criminal liability. The cease and desist order is conclusive
17 proof of unlicensed practice and may be enforced under RCW 7.21.060.
18 This method of enforcement of the cease and desist order or civil fine
19 may be used in addition to, or as an alternative to, any provisions for
20 enforcement of agency orders set out in chapter 34.05 RCW.

21 (6) The attorney general, a county prosecuting attorney, the
22 secretary, a board, or any person may in accordance with the laws of
23 this state governing injunctions, maintain an action in the name of
24 this state to enjoin any person practicing a profession or business for
25 which a license is required by the chapters specified in RCW 18.130.040
26 without a license from engaging in such practice or operating such
27 business until the required license is secured. However, the
28 injunction shall not relieve the person so practicing or operating a
29 business without a license from criminal prosecution therefor, but the
30 remedy by injunction shall be in addition to any criminal liability.

31 (7)(a) Unlicensed practice of a profession or operating a business
32 for which a license is required by the chapters specified in RCW
33 18.130.040, unless otherwise exempted by law, constitutes a gross
34 misdemeanor for a single violation.

35 (b) Each subsequent violation, whether alleged in the same or in
36 subsequent prosecutions, is a class C felony punishable according to
37 chapter 9A.20 RCW.

1 (8) All fees, fines, forfeitures, and penalties collected or
2 assessed by a court because of a violation of this section shall be
3 remitted to the health professions account.

4 NEW SECTION. **Sec. 3.** A new section is added to chapter 18.130 RCW
5 to read as follows:

6 (1) A person who provides health services and complies with the
7 requirements of subsection (3) of this section is not in violation of
8 any provision of this chapter relating to the unlicensed practice of a
9 health profession unless the person engages in any of the following
10 activities without a proper license:

11 (a) Conducts surgery or any other procedure on another person that
12 severs or penetrates the tissues of human beings;

13 (b) Administers or prescribes x-ray radiation to another person;

14 (c) Prescribes or administers legend drugs or controlled substances
15 to another person;

16 (d) Recommends the discontinuance of legend drugs or controlled
17 substances prescribed by an appropriately licensed practitioner;

18 (e) Willfully diagnoses and treats a physical or mental condition
19 of any person under circumstances or conditions that cause or create a
20 risk of great bodily harm, serious physical or mental illness, or
21 death;

22 (f) Sets fractures;

23 (g) Treats lacerations or abrasions through electrotherapy; or

24 (h) Holds out, states, indicates, advertises, or implies to a
25 client or prospective client that he or she holds a license to practice
26 any health care profession that he or she does not have.

27 (2) A person who advertises any services that are not prohibited by
28 subsection (1) of this section shall disclose in the advertisement that
29 he or she is not licensed by the state as a health care provider.

30 (3) A person who provides services under subsection (1) of this
31 section shall, prior to providing those services, do the following:

32 (a) Disclose to the client in a written statement using plain
33 language the following:

34 (i) That he or she is not a licensed physician;

35 (ii) That the treatment is alternative or complementary to health
36 care services requiring a license by the state;

1 (iii) That the services to be provided do not require a license by
2 the state;

3 (iv) The nature of the services to be provided;

4 (v) The theory of treatment upon which the services are based; and

5 (vi) His or her education, training, experience, and other
6 qualifications regarding the services to be provided; and

7 (b) Obtain a written acknowledgment from the client stating that he
8 or she has been provided with the information described in this
9 subsection (3). The client must be provided with a copy of the written
10 acknowledgment. The person providing the service must retain a copy of
11 the signed written acknowledgment for a period of three years.

12 (4) The information required by subsection (3) of this section must
13 be provided in a language that the client understands.

14 (5) Nothing in this section may be construed to:

15 (a) Affect the scope of practice of licensed physicians and
16 surgeons; or

17 (b) Limit the right of any person to seek relief for negligence or
18 any other civil remedy against a person providing services subject to
19 the requirements of this section.

20 NEW SECTION. **Sec. 4.** This act takes effect July 1, 2004.

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