
HOUSE BILL 2879

State of Washington

58th Legislature

2004 Regular Session

By Representatives Cody, Campbell and Schual-Berke; by request of Department of Health

Read first time 01/22/2004. Referred to Committee on Health Care.

1 AN ACT Relating to health professions disciplinary procedures;
2 amending RCW 18.130.060, 18.130.090, and 18.130.190; adding a new
3 section to chapter 18.130 RCW; and providing an effective date.

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

5 **Sec. 1.** RCW 18.130.060 and 2001 c 101 s 1 are each amended to read
6 as follows:

7 In addition to the authority specified in RCW 18.130.050, the
8 secretary has the following additional authority:

9 (1) To employ such investigative, administrative, and clerical
10 staff as necessary for the enforcement of this chapter;

11 (2) Upon the request of a board, to appoint pro tem members to
12 participate as members of a panel of the board in connection with
13 proceedings specifically identified in the request. Individuals so
14 appointed must meet the same minimum qualifications as regular members
15 of the board. Pro tem members appointed for matters under this chapter
16 are appointed for a term of no more than one year. No pro tem member
17 may serve more than four one-year terms. While serving as board
18 members pro tem, persons so appointed have all the powers, duties, and
19 immunities, and are entitled to the emoluments, including travel

1 expenses in accordance with RCW 43.03.050 and 43.03.060, of regular
2 members of the board. The chairperson of a panel shall be a regular
3 member of the board appointed by the board chairperson. Panels have
4 authority to act as directed by the board with respect to all matters
5 concerning the review, investigation, and adjudication of all
6 complaints, allegations, charges, and matters subject to the
7 jurisdiction of the board. The authority to act through panels does
8 not restrict the authority of the board to act as a single body at any
9 phase of proceedings within the board's jurisdiction. Board panels may
10 make interim orders and issue final decisions with respect to matters
11 and cases delegated to the panel by the board. Final decisions may be
12 appealed as provided in chapter 34.05 RCW, the Administrative Procedure
13 Act;

14 (3) To establish fees to be paid for witnesses, expert witnesses,
15 and consultants used in any investigation and to establish fees to
16 witnesses in any agency adjudicative proceeding as authorized by RCW
17 34.05.446;

18 (4) To conduct investigations and practice reviews at the direction
19 of the disciplining authority and to issue subpoenas, administer oaths,
20 and take depositions in the course of conducting those investigations
21 and practice reviews at the direction of the disciplining authority;

22 (5) To obtain copies of health care information pursuant to RCW
23 70.02.050(2) that are relevant to a matter under investigation. In the
24 event there is reasonable cause to believe a delay will result in the
25 destruction or alteration of such records, investigators may enter the
26 facility, during normal business hours, where the records are located
27 and immediately make copies of the original records;

28 (6) To obtain an administrative investigation warrant in accordance
29 with section 2 of this act in the event it is necessary to obtain
30 physical evidence;

31 (7) To have the health professions regulatory program establish a
32 system to recruit potential public members, to review the
33 qualifications of such potential members, and to provide orientation to
34 those public members appointed pursuant to law by the governor or the
35 secretary to the boards and commissions specified in RCW
36 18.130.040(2)(b), and to the advisory committees and councils for
37 professions specified in RCW 18.130.040(2)(a).

1 NEW SECTION. **Sec. 2.** A new section is added to chapter 18.130 RCW
2 to read as follows:

3 (1) In the event it is necessary to obtain physical evidence, a
4 judge of a court of competent jurisdiction, and upon proper oath or
5 affirmation showing probable cause, may issue warrants for the purpose
6 of conducting administrative investigations authorized by this chapter,
7 or rules adopted under this chapter, and removal of property
8 appropriate to the investigations. For purposes of the issuance of
9 administrative investigation warrants, probable cause exists upon
10 showing a valid public interest in the effective enforcement of this
11 chapter, or rules adopted under this chapter, sufficient to justify
12 administrative investigation of the area, premises, building, or
13 conveyance in the circumstances specified in the application for the
14 warrant.

15 (2) A warrant shall be issued only upon receipt of an affidavit of
16 a designated officer or employee having knowledge of the facts alleged,
17 sworn to before the judge and establishing the grounds for issuing the
18 warrant. If the judge is satisfied that grounds for the application
19 exist or that there is probable cause to believe they exist, the judge
20 shall issue a warrant identifying the area, premises, building, or
21 conveyance to be inspected, the purpose of the investigation, and, if
22 appropriate, the type of property to be inspected, if any. The warrant
23 shall:

24 (a) State the grounds for its issuance and the name of each person
25 whose affidavit has been taken in support;

26 (b) Be directed to a person authorized by RCW 18.130.060 to execute
27 it;

28 (c) Command the person to whom it is directed to inspect the area,
29 premises, building, or conveyance identified for the purpose specified
30 and, if appropriate, direct the seizure of the property specified;

31 (d) Identify the item or types of property to be removed, if any;
32 and

33 (e) Direct that it be served during normal business hours and
34 designate the judge to whom it shall be returned.

35 (3) A warrant issued in accordance with this section must be
36 executed and returned within ten days of its date unless, upon a
37 showing of a need for additional time, the court orders otherwise. If
38 property is removed in accordance with a warrant, a copy shall be given

1 to the person from whom or from whose premises the property is taken,
2 together with a receipt for the property taken. The return of the
3 warrant shall be made promptly, accompanied by a written inventory of
4 any property taken. The inventory shall be made in the presence of the
5 person executing the warrant and of the person from whose possession or
6 premises the property was taken, if present, or in the presence of at
7 least one credible person other than the person executing the warrant.
8 A copy of the inventory shall be delivered to the person from whom or
9 from whose premises the property was taken and to the applicant for the
10 warrant.

11 (4) The judge who has issued a warrant shall attach a copy of the
12 documents in connection with the warrant and cause them to be filed
13 with the clerk of the court of the county in which the warrant is to be
14 executed.

15 (5) In the event consent to entry and removal of property is given,
16 a warrant is not required. A written inventory shall be made and
17 provided as set forth in subsection (3) of this section.

18 **Sec. 3.** RCW 18.130.090 and 1993 c 367 s 1 are each amended to read
19 as follows:

20 (1) If the disciplining authority determines, upon investigation,
21 that there is reason to believe a violation of RCW 18.130.180 has
22 occurred, a statement of charge or charges (~~shall~~) may be prepared
23 and served upon the license holder or applicant at the earliest
24 practical time. The statement of charge or charges shall be
25 accompanied by a notice that the license holder or applicant may
26 request (~~a hearing~~) an adjudicative proceeding to contest the charge
27 or charges.

28 (a) The license holder or applicant must file a request for
29 (~~hearing~~) an adjudicative proceeding with the disciplining authority
30 within twenty days after being served the statement of charges. If the
31 twenty-day limit results in a hardship upon the license holder or
32 applicant, he or she may request for good cause an extension not to
33 exceed sixty additional days. If the disciplining authority finds that
34 there is good cause, it shall grant the extension.

35 (b) The failure to request (~~a hearing~~) an adjudicative proceeding
36 constitutes a default(~~, whereupon~~). The disciplining authority may
37 then enter a decision on the basis of the facts available to it.

1 (2) As an alternative to filing a statement of charge or charges,
2 the disciplining authority may issue to a license holder or applicant
3 a written notice of action imposing any sanction authorized under RCW
4 18.130.160. The notice shall state the reasons for the action.

5 (a) The applicant or license holder has the right to an
6 adjudicative proceeding. If an adjudicative proceeding is requested,
7 the action will be of no effect, other than to identify the allegations
8 and proposed sanctions. The license holder or applicant must file a
9 request for an adjudicative proceeding with the disciplining authority
10 within twenty days after being served the action. If the twenty-day
11 limit results in a hardship upon the license holder or applicant, he or
12 she may request for good cause an extension not to exceed sixty
13 additional days. If the disciplining authority finds that there is
14 good cause, it shall grant the extension.

15 (b) In the event no request for an adjudicative proceeding is filed
16 within the time allowed by (a) of this subsection, the action becomes
17 effective.

18 (3) If ((a hearing)) an adjudicative proceeding is requested, the
19 time of the ((hearing)) adjudicative proceeding shall be fixed by the
20 disciplining authority as soon as convenient, but the ((hearing))
21 adjudicative proceeding shall not be held earlier than thirty days
22 after service of the charges or notice of action upon the license
23 holder or applicant.

24 **Sec. 4.** RCW 18.130.190 and 2003 c 53 s 141 are each amended to
25 read as follows:

26 (1) The secretary shall investigate complaints concerning practice
27 by unlicensed persons of a profession or business for which a license
28 is required by the chapters specified in RCW 18.130.040. In the
29 investigation of the complaints, the secretary shall have the same
30 authority as provided the secretary under RCW 18.130.050 and
31 18.130.060.

32 (2) The secretary may issue a notice of intention to issue a cease
33 and desist order to any person whom the secretary has reason to believe
34 is engaged in the unlicensed practice of a profession or business for
35 which a license is required by the chapters specified in RCW
36 18.130.040. The person to whom such notice is issued may request an
37 adjudicative proceeding to contest the charges. The request for

1 hearing must be filed within twenty days after service of the notice of
2 intention to issue a cease and desist order. The failure to request a
3 hearing constitutes a default, whereupon the secretary may enter a
4 permanent cease and desist order, which may include a civil fine. All
5 proceedings shall be conducted in accordance with chapter 34.05 RCW.

6 (3) If the secretary makes a final determination that a person has
7 engaged or is engaging in unlicensed practice, the secretary may issue
8 a cease and desist order. In addition, the secretary may impose a
9 civil fine in an amount not exceeding one thousand dollars for each day
10 upon which the person engaged in unlicensed practice of a business or
11 profession for which a license is required by one or more of the
12 chapters specified in RCW 18.130.040. The proceeds of such fines shall
13 be deposited to the health professions account.

14 (4) If the secretary makes a written finding of fact that the
15 public interest will be irreparably harmed by delay in issuing an
16 order, the secretary may issue a temporary cease and desist order. The
17 person receiving a temporary cease and desist order shall be provided
18 an opportunity for a prompt hearing. The temporary cease and desist
19 order shall remain in effect until further order of the secretary. The
20 failure to request a prompt or regularly scheduled hearing constitutes
21 a default, whereupon the secretary may enter a permanent cease and
22 desist order, which may include a civil fine.

23 (5) Neither the issuance of a cease and desist order nor payment of
24 a civil fine shall relieve the person so practicing or operating a
25 business without a license from criminal prosecution therefor, but the
26 remedy of a cease and desist order or civil fine shall be in addition
27 to any criminal liability. The cease and desist order is conclusive
28 proof of unlicensed practice and may be enforced under RCW 7.21.060.
29 This method of enforcement of the cease and desist order or civil fine
30 may be used in addition to, or as an alternative to, any provisions for
31 enforcement of agency orders set out in chapter 34.05 RCW.

32 (6) The attorney general, a county prosecuting attorney, the
33 secretary, a board, or any person may in accordance with the laws of
34 this state governing injunctions, maintain an action in the name of
35 this state to enjoin any person practicing a profession or business for
36 which a license is required by the chapters specified in RCW 18.130.040
37 without a license from engaging in such practice or operating such
38 business until the required license is secured. However, the

1 injunction shall not relieve the person so practicing or operating a
2 business without a license from criminal prosecution therefor, but the
3 remedy by injunction shall be in addition to any criminal liability.

4 (7)(a) Unlicensed practice of a profession or operating a business
5 for which a license is required by the chapters specified in RCW
6 18.130.040, unless otherwise exempted by law, constitutes a gross
7 misdemeanor for a single violation.

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

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

14 NEW SECTION. **Sec. 5.** Section 4 of this act takes effect January
15 1, 2005.

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