
SUBSTITUTE HOUSE BILL 1071

State of Washington 59th Legislature 2005 Regular Session

By House Committee on Health Care (originally sponsored by Representatives Campbell and Morrell)

READ FIRST TIME 03/07/05.

1 AN ACT Relating to the uniform disciplinary act for health
2 professions; amending RCW 18.130.160 and 18.130.172; adding a new
3 section to chapter 18.130 RCW; and creating new sections.

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

5 NEW SECTION. **Sec. 1.** The uniform disciplinary act provides a
6 consistent process for addressing acts of unprofessional conduct
7 affecting fifty-nine health professions regulated by the state. The
8 disciplinary authorities include the secretary of health and sixteen
9 boards and commissions charged with protecting the health and safety of
10 patients from unprofessional conduct. It is recognized nationally as
11 a model law and has worked well over time to provide uniformity and
12 efficiency to the disciplinary process.

13 The legislature finds that there may be methods for increasing the
14 efficiency and effectiveness of this model through the redistribution
15 of duties between the secretary of health and the health profession
16 boards and commissions. In addition, there is an opportunity to
17 achieve greater consistency in the sanctions imposed across the health
18 professions through specifically identified sanctions for specific acts

1 of unprofessional conduct. A more consistent application of sanctions
2 across professions protects both the safety of the public and the due
3 process rights of all health care professionals.

4 NEW SECTION. **Sec. 2.** The secretary of health shall establish a
5 work group to review the complaint processing and sanction
6 determination phases of the health professions disciplinary process.
7 At the secretary of health's discretion, the work group may include
8 representatives of different health profession boards and commissions,
9 professional associations, and other interested parties. The work
10 group shall submit a report to the legislature by December 1, 2005,
11 with recommendations for creating:

12 (1) Greater efficiencies between the health professions boards and
13 commissions and the secretary of health in processing complaints
14 against license holders; and

15 (2) More consistent sanction determinations that balance the
16 protection of the public's health and the rights of health care
17 providers among the different health professions, including
18 recommendations for specific ranges of sanctions for each act of
19 unprofessional conduct and the effect of any aggravating and mitigating
20 factors that may apply to each.

21 **Sec. 3.** RCW 18.130.160 and 2001 c 195 s 1 are each amended to read
22 as follows:

23 Upon a finding, after hearing, that a license holder or applicant
24 has committed unprofessional conduct or is unable to practice with
25 reasonable skill and safety due to a physical or mental condition, the
26 disciplining authority may issue an order providing for one or any
27 combination of the following:

- 28 (1) Revocation of the license;
- 29 (2) Suspension of the license for a fixed or indefinite term;
- 30 (3) Restriction or limitation of the practice;
- 31 (4) Requiring the satisfactory completion of a specific program of
32 remedial education or treatment;
- 33 (5) The monitoring of the practice by a supervisor approved by the
34 disciplining authority;
- 35 (6) Censure or reprimand;

1 (7) Compliance with conditions of probation for a designated period
2 of time;

3 (8) Payment of a fine for each violation of this chapter, not to
4 exceed five thousand dollars per violation. Funds received shall be
5 placed in the health professions account;

6 (9) Denial of the license request;

7 (10) Corrective action;

8 (11) Refund of fees billed to and collected from the consumer;

9 (12) A surrender of the practitioner's license in lieu of other
10 sanctions, which must be reported to the federal data bank.

11 Except as otherwise provided in section 5 of this act, any of the
12 actions under this section may be totally or partly stayed by the
13 disciplining authority. In determining what action is appropriate, the
14 disciplining authority must first consider what sanctions are necessary
15 to protect or compensate the public. Only after such provisions have
16 been made may the disciplining authority consider and include in the
17 order requirements designed to rehabilitate the license holder or
18 applicant. All costs associated with compliance with orders issued
19 under this section are the obligation of the license holder or
20 applicant.

21 The licensee or applicant may enter into a stipulated disposition
22 of charges that includes one or more of the sanctions of this section,
23 but only after a statement of charges has been issued and the licensee
24 has been afforded the opportunity for a hearing and has elected on the
25 record to forego such a hearing. The stipulation shall either contain
26 one or more specific findings of unprofessional conduct or inability to
27 practice, or a statement by the licensee acknowledging that evidence is
28 sufficient to justify one or more specified findings of unprofessional
29 conduct or inability to practice. The stipulation entered into
30 pursuant to this subsection shall be considered formal disciplinary
31 action for all purposes.

32 **Sec. 4.** RCW 18.130.172 and 2000 c 171 s 29 are each amended to
33 read as follows:

34 (1) Except for those acts of unprofessional conduct specified in
35 section 5 of this act, prior to serving a statement of charges under
36 RCW 18.130.090 or 18.130.170, the disciplinary authority may furnish a
37 statement of allegations to the licensee or applicant along with a

1 detailed summary of the evidence relied upon to establish the
2 allegations and a proposed stipulation for informal resolution of the
3 allegations. These documents shall be exempt from public disclosure
4 until such time as the allegations are resolved either by stipulation
5 or otherwise.

6 (2) The disciplinary authority and the applicant or licensee may
7 stipulate that the allegations may be disposed of informally in
8 accordance with this subsection. The stipulation shall contain a
9 statement of the facts leading to the filing of the complaint; the act
10 or acts of unprofessional conduct alleged to have been committed or the
11 alleged basis for determining that the applicant or licensee is unable
12 to practice with reasonable skill and safety; a statement that the
13 stipulation is not to be construed as a finding of either
14 unprofessional conduct or inability to practice; an acknowledgement
15 that a finding of unprofessional conduct or inability to practice, if
16 proven, constitutes grounds for discipline under this chapter; and an
17 agreement on the part of the licensee or applicant that the sanctions
18 set forth in RCW 18.130.160, except RCW 18.130.160 (1), (2), (6), and
19 (8), may be imposed as part of the stipulation, except that no fine may
20 be imposed but the licensee or applicant may agree to reimburse the
21 disciplinary authority the costs of investigation and processing the
22 complaint up to an amount not exceeding one thousand dollars per
23 allegation; and an agreement on the part of the disciplinary authority
24 to forego further disciplinary proceedings concerning the allegations.
25 A stipulation entered into pursuant to this subsection shall not be
26 considered formal disciplinary action.

27 (3) If the licensee or applicant declines to agree to disposition
28 of the charges by means of a stipulation pursuant to subsection (2) of
29 this section, the disciplinary authority may proceed to formal
30 disciplinary action pursuant to RCW 18.130.090 or 18.130.170.

31 (4) Upon execution of a stipulation under subsection (2) of this
32 section by both the licensee or applicant and the disciplinary
33 authority, the complaint is deemed disposed of and shall become subject
34 to public disclosure on the same basis and to the same extent as other
35 records of the disciplinary authority. Should the licensee or
36 applicant fail to pay any agreed reimbursement within thirty days of
37 the date specified in the stipulation for payment, the disciplinary

1 authority may seek collection of the amount agreed to be paid in the
2 same manner as enforcement of a fine under RCW 18.130.165.

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

5 (1) The disciplining authority shall revoke the license of a
6 license holder who is found, in three unrelated orders under RCW
7 18.130.110 in a ten-year period, to have engaged in three separate
8 courses of unprofessional conduct based upon any combination of the
9 following:

10 (a) Any violation of RCW 18.130.180(4) that causes or substantially
11 contributes to the death of or severe injury to a patient or creates a
12 significant risk of harm to the public;

13 (b) Any violation of RCW 18.130.180(6) that creates a significant
14 risk of harm to the public;

15 (c) Any violation of RCW 18.130.180(7) that causes or substantially
16 contributes to the death of or severe injury to a patient or creates a
17 significant risk of harm to the public;

18 (d) Any violation of RCW 18.130.180(9);

19 (e) Any violation of RCW 18.130.180(17), except gross misdemeanors;

20 (f) Any violation of RCW 18.130.180(23) that causes or
21 substantially contributes to the death of or severe injury to a patient
22 or creates a significant risk of harm to the public;

23 (g) Any violation of RCW 18.130.180(24) based upon an act of abuse
24 to a client or patient; and

25 (h) Any violation of RCW 18.130.180(24) based upon sexual contact
26 with a client or patient.

27 (2) For the purposes of subsection (1) of this section, a ten-year
28 period commences upon the completion of all conditions and obligations
29 imposed for the acts identified in subsection (1)(a) through (h) of
30 this section.

31 (3) An order that includes a finding of mitigating circumstances
32 for an act of unprofessional conduct may be issued and, except for (a)
33 of this subsection, applied one time for any license holder or
34 applicant for a license, and if so, that order does not count as one of
35 the three orders that triggers a license revocation for purposes of
36 this section. A finding of mitigating circumstances under (a) of this
37 subsection may be issued and applied as many times as the license

1 holder meets the criteria for such a finding and does not count as one
2 of the three orders that triggers the revocation of a license for the
3 purposes of this section. Except for (a) of this subsection, after a
4 finding of mitigating circumstances is issued and applied, no
5 subsequent orders under this section may consider any mitigating
6 circumstances. The following mitigating circumstances may be
7 considered:

8 (a) For subsection (1)(a) of this section, the act involved a high-
9 risk procedure, there was no lower-risk alternative to that procedure,
10 the patient was informed of the risks of the procedure and consented to
11 the procedure anyway, and prior to the institution of disciplinary
12 actions the license holder took appropriate remedial measures;

13 (b) There is a strong potential for rehabilitation of the license
14 holder; or

15 (c) There is a strong potential for remedial education and training
16 to prevent future harm to the public.

17 (4) Nothing in this section limits the ability of the disciplining
18 authority to impose any sanction, including revocation, for a single
19 violation of any subsection of RCW 18.130.180.

20 (5) Notwithstanding RCW 9.96A.020(1), revocation of a license under
21 this section is not subject to a petition for reinstatement under RCW
22 18.130.150.

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