
SUBSTITUTE HOUSE BILL 2974

State of Washington 59th Legislature 2006 Regular Session

By House Committee on Health Care (originally sponsored by Representatives Cody, Morrell and Moeller)

READ FIRST TIME 02/03/06.

1 AN ACT Relating to health professions discipline; amending RCW
2 18.130.060, 18.130.070, 18.130.050, 18.130.080, 18.130.160, and
3 18.130.175; adding new sections to chapter 18.130 RCW; adding a new
4 section to chapter 43.43 RCW; repealing RCW 18.57.174 and 18.71.0193;
5 providing an effective date; and providing an expiration date.

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

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

9 In addition to the authority specified in RCW 18.130.050, the
10 secretary has the following additional authority:

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

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

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

16 (3) To establish fees to be paid for witnesses, expert witnesses,
17 and consultants used in any investigation and to establish fees to
18 witnesses in any agency adjudicative proceeding as authorized by RCW
19 34.05.446;

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

24 (5) To have the health professions regulatory program establish a
25 system to recruit potential public members, to review the
26 qualifications of such potential members, and to provide orientation to
27 those public members appointed pursuant to law by the governor or the
28 secretary to the boards and commissions specified in RCW
29 18.130.040(2)(b), and to the advisory committees and councils for
30 professions specified in RCW 18.130.040(2)(a); and

31 (6) To adopt rules, in consultation with the disciplining
32 authorities, requiring every license holder to report information
33 identified in RCW 18.130.070.

34 **Sec. 2.** RCW 18.130.070 and 2005 c 470 s 2 are each amended to read
35 as follows:

36 (1)(a) The ~~((disciplining authority may))~~ secretary shall adopt
37 rules requiring ~~((any person, including, but not limited to, licensees,~~

1 ~~corporations, organizations, health care facilities, impaired~~
2 ~~practitioner programs, or voluntary substance abuse monitoring programs~~
3 ~~approved by the disciplining authority and state or local governmental~~
4 ~~agencies,)) every license holder to report to the appropriate
5 disciplining authority any conviction, determination, or finding that
6 ((a)) another license holder has committed an act which constitutes
7 unprofessional conduct, or to report information to the disciplining
8 authority, an impaired practitioner program, or voluntary substance
9 abuse monitoring program approved by the disciplining authority, which
10 indicates that the other license holder may not be able to practice his
11 or her profession with reasonable skill and safety to consumers as a
12 result of a mental or physical condition.~~

13 (b) The secretary may adopt rules to require other persons,
14 including corporations, organizations, health care facilities, impaired
15 practitioner programs, or voluntary substance abuse monitoring programs
16 approved by a disciplining authority, and state or local government
17 agencies to report:

18 (i) Any conviction, determination, or finding that a license holder
19 has committed an act which constitutes unprofessional conduct; or

20 (ii) Information to the disciplining authority, an impaired
21 practitioner program, or voluntary substance abuse monitoring program
22 approved by the disciplining authority, which indicates that the
23 license holder may not be able to practice his or her profession with
24 reasonable skill and safety to consumers as a result of a mental or
25 physical condition.

26 (c) If a report has been made by a hospital to the department
27 pursuant to RCW 70.41.210, a report to the disciplining authority is
28 not required. To facilitate meeting the intent of this section, the
29 cooperation of agencies of the federal government is requested by
30 reporting any conviction, determination, or finding that a federal
31 employee or contractor regulated by the disciplining authorities
32 enumerated in this chapter has committed an act which constituted
33 unprofessional conduct and reporting any information which indicates
34 that a federal employee or contractor regulated by the disciplining
35 authorities enumerated in this chapter may not be able to practice his
36 or her profession with reasonable skill and safety as a result of a
37 mental or physical condition.

1 (2) If a person fails to furnish a required report, the
2 disciplining authority may petition the superior court of the county in
3 which the person resides or is found, and the court shall issue to the
4 person an order to furnish the required report. A failure to obey the
5 order is a contempt of court as provided in chapter 7.21 RCW.

6 (3) A person is immune from civil liability, whether direct or
7 derivative, for providing information to the disciplining authority
8 pursuant to the rules adopted under subsection (1) of this section.

9 (4)(a) The holder of a license subject to the jurisdiction of this
10 chapter shall report to the disciplining authority:

11 (i) Any conviction, determination, or finding that ((the licensee))
12 he or she has committed unprofessional conduct or is unable to practice
13 with reasonable skill or safety; and

14 (ii) Any disqualification from participation in the federal
15 medicare program, under Title XVIII of the federal social security act
16 or the federal medicaid program, under Title XIX of the federal social
17 security act.

18 (b) Failure to report within thirty days of notice of the
19 conviction, determination, ((or)) finding, or disqualification
20 constitutes grounds for disciplinary action.

21 NEW SECTION. Sec. 3. A new section is added to chapter 18.130 RCW
22 to read as follows:

23 Any individual who applies for a license or temporary practice
24 permit or holds a license or temporary practice permit and is
25 prohibited from practicing a health care profession in another state
26 because of an act of unprofessional conduct that is substantially
27 equivalent to an act of unprofessional conduct prohibited by this
28 chapter or any of the chapters specified in RCW 18.130.040 is
29 prohibited from practicing a health care profession in this state until
30 proceedings of the appropriate disciplining authority have been
31 completed under RCW 18.130.050.

32 **Sec. 4.** RCW 18.130.050 and 1995 c 336 s 4 are each amended to read
33 as follows:

34 The disciplining authority has the following authority:

35 (1) To adopt, amend, and rescind such rules as are deemed necessary
36 to carry out this chapter;

1 (2) To investigate all complaints or reports of unprofessional
2 conduct as defined in this chapter and to hold hearings as provided in
3 this chapter;

4 (3) To issue subpoenas and administer oaths in connection with any
5 investigation, hearing, or proceeding held under this chapter;

6 (4) To take or cause depositions to be taken and use other
7 discovery procedures as needed in any investigation, hearing, or
8 proceeding held under this chapter;

9 (5) To compel attendance of witnesses at hearings;

10 (6) In the course of investigating a complaint or report of
11 unprofessional conduct, to conduct practice reviews;

12 (7) To take emergency action ordering summary suspension of a
13 license, or restriction or limitation of the (~~licensee's~~) license
14 holder's practice pending proceedings by the disciplining authority.
15 Consistent with section 3 of this act, a disciplining authority shall
16 issue a summary suspension of the license or temporary practice permit
17 of a license holder prohibited from practicing a health care profession
18 in another state, federal, or foreign jurisdiction because of an act of
19 unprofessional conduct that is substantially equivalent to an act of
20 unprofessional conduct prohibited by this chapter or any of the
21 chapters specified in RCW 18.130.040. The summary suspension remains
22 in effect until proceedings by the Washington disciplining authority
23 have been completed;

24 (8) To use a presiding officer as authorized in RCW 18.130.095(3)
25 or the office of administrative hearings as authorized in chapter 34.12
26 RCW to conduct hearings. The disciplining authority shall make the
27 final decision regarding disposition of the license unless the
28 disciplining authority elects to delegate in writing the final decision
29 to the presiding officer;

30 (9) To use individual members of the boards to direct
31 investigations. However, the member of the board shall not
32 subsequently participate in the hearing of the case;

33 (10) To enter into contracts for professional services determined
34 to be necessary for adequate enforcement of this chapter;

35 (11) To contract with licensees or other persons or organizations
36 to provide services necessary for the monitoring and supervision of
37 licensees who are placed on probation, whose professional activities

1 are restricted, or who are for any authorized purpose subject to
2 monitoring by the disciplining authority;

3 (12) To adopt standards of professional conduct or practice;

4 (13) To grant or deny license applications, and in the event of a
5 finding of unprofessional conduct by an applicant or license holder, to
6 impose any sanction against a license applicant or license holder
7 provided by this chapter;

8 (14) To designate individuals authorized to sign subpoenas and
9 statements of charges;

10 (15) To establish panels consisting of three or more members of the
11 board to perform any duty or authority within the board's jurisdiction
12 under this chapter;

13 (16) To review and audit the records of licensed health facilities'
14 or services' quality assurance committee decisions in which a
15 licensee's practice privilege or employment is terminated or
16 restricted. Each health facility or service shall produce and make
17 accessible to the disciplining authority the appropriate records and
18 otherwise facilitate the review and audit. Information so gained shall
19 not be subject to discovery or introduction into evidence in any civil
20 action pursuant to RCW 70.41.200(3).

21 **Sec. 5.** RCW 18.130.080 and 1998 c 132 s 9 are each amended to read
22 as follows:

23 (1) A person, including but not limited to consumers, licensees,
24 corporations, organizations, health care facilities, impaired
25 practitioner programs, or voluntary substance abuse monitoring programs
26 approved by disciplining authorities, and state and local governmental
27 agencies, may submit a written complaint to the disciplining authority
28 charging a license holder or applicant with unprofessional conduct and
29 specifying the grounds therefor or to report information to the
30 disciplining authority, or voluntary substance abuse monitoring
31 program, or an impaired practitioner program approved by the
32 disciplining authority, which indicates that the license holder may not
33 be able to practice his or her profession with reasonable skill and
34 safety to consumers as a result of a mental or physical condition. If
35 the disciplining authority determines that the complaint merits
36 investigation, or if the disciplining authority has reason to believe,
37 without a formal complaint, that a license holder or applicant may have

1 engaged in unprofessional conduct, the disciplining authority shall
2 investigate to determine whether there has been unprofessional conduct.
3 In determining whether or not to investigate, the disciplining
4 authority shall consider any prior complaints received by the
5 disciplining authority, any prior findings of fact under RCW
6 18.130.110, any stipulations to informal disposition under RCW
7 18.130.172, and any comparable action taken by other state disciplining
8 authorities.

9 (2) Notwithstanding subsection (1) of this section, the
10 disciplining authority shall initiate an investigation in every
11 instance where the disciplining authority receives information that a
12 health care provider has been disqualified from participating in the
13 federal medicare program, under Title XVIII of the federal social
14 security act, or the federal medicaid program, under Title XIX of the
15 federal social security act.

16 (3) A person who files a complaint or reports information under
17 this section in good faith is immune from suit in any civil action
18 related to the filing or contents of the complaint.

19 **Sec. 6.** RCW 18.130.160 and 2001 c 195 s 1 are each amended to read
20 as follows:

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

- 26 (1) Revocation of the license;
- 27 (2) Suspension of the license for a fixed or indefinite term;
- 28 (3) Restriction or limitation of the practice;
- 29 (4) Requiring the satisfactory completion of a specific program of
30 remedial education or treatment;
- 31 (5) The monitoring of the practice by a supervisor approved by the
32 disciplining authority;
- 33 (6) Censure or reprimand;
- 34 (7) Compliance with conditions of probation for a designated period
35 of time;
- 36 (8) Payment of a fine for each violation of this chapter, not to

1 exceed five thousand dollars per violation. Funds received shall be
2 placed in the health professions account;

3 (9) Denial of the license request;

4 (10) Corrective action;

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

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

8 Any of the actions under this section may be totally or partly
9 stayed by the disciplining authority. Safeguarding the public's health
10 and safety is the paramount responsibility of every disciplining
11 authority and in determining what action is appropriate, the
12 disciplining authority must first consider what sanctions are necessary
13 to protect or compensate the public. Only after such provisions have
14 been made may the disciplining authority consider and include in the
15 order requirements designed to rehabilitate the license holder or
16 applicant. All costs associated with compliance with orders issued
17 under this section are the obligation of the license holder or
18 applicant.

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

30 **Sec. 7.** RCW 18.130.175 and 2005 c 274 s 233 are each amended to
31 read as follows:

32 (1) In lieu of disciplinary action under RCW 18.130.160 and if the
33 disciplining authority determines that the unprofessional conduct may
34 be the result of substance abuse, the disciplining authority may refer
35 the license holder to a voluntary substance abuse monitoring program
36 approved by the disciplining authority.

1 The cost of the treatment shall be the responsibility of the
2 license holder, but the responsibility does not preclude payment by an
3 employer, existing insurance coverage, or other sources. Primary
4 alcoholism or other drug addiction treatment shall be provided by
5 approved treatment programs under RCW 70.96A.020 or by any other
6 provider approved by the entity or the commission. However, nothing
7 shall prohibit the disciplining authority from approving additional
8 services and programs as an adjunct to primary alcoholism or other drug
9 addiction treatment. The disciplining authority may also approve the
10 use of out-of-state programs. Referral of the license holder to the
11 program shall be done only with the consent of the license holder.
12 Referral to the program may also include probationary conditions for a
13 designated period of time. If the license holder does not consent to
14 be referred to the program or does not successfully complete the
15 program, the disciplining authority may take appropriate action under
16 RCW 18.130.160 which includes suspension of the license unless or until
17 the disciplining authority, in consultation with the director of the
18 voluntary substance abuse monitoring program, determines the license
19 holder is able to practice safely. The secretary shall adopt uniform
20 rules for the evaluation by the disciplinary authority of a relapse or
21 program violation on the part of a license holder in the substance
22 abuse monitoring program. The evaluation shall encourage program
23 participation with additional conditions, in lieu of disciplinary
24 action, when the disciplinary authority determines that the license
25 holder is able to continue to practice with reasonable skill and
26 safety.

27 (2) In addition to approving substance abuse monitoring programs
28 that may receive referrals from the disciplining authority, the
29 disciplining authority may establish by rule requirements for
30 participation of license holders who are not being investigated or
31 monitored by the disciplining authority for substance abuse. License
32 holders voluntarily participating in the approved programs without
33 being referred by the disciplining authority shall not be subject to
34 disciplinary action under RCW 18.130.160 for their substance abuse, and
35 shall not have their participation made known to the disciplining
36 authority, if they meet the requirements of this section and the
37 program in which they are participating.

1 (3) The license holder shall sign a waiver allowing the program to
2 release information to the disciplining authority if the licensee does
3 not comply with the requirements of this section or is unable to
4 practice with reasonable skill or safety. The substance abuse program
5 shall report to the disciplining authority any license holder who fails
6 to comply with the requirements of this section or the program or who,
7 in the opinion of the program, is unable to practice with reasonable
8 skill or safety. License holders shall report to the disciplining
9 authority if they fail to comply with this section or do not complete
10 the program's requirements. License holders may, upon the agreement of
11 the program and disciplining authority, reenter the program if they
12 have previously failed to comply with this section.

13 (4) The treatment and pretreatment records of license holders
14 referred to or voluntarily participating in approved programs shall be
15 confidential, shall be exempt from chapter 42.56 RCW, and shall not be
16 subject to discovery by subpoena or admissible as evidence except for
17 monitoring records reported to the disciplining authority for cause as
18 defined in subsection (3) of this section. Monitoring records relating
19 to license holders referred to the program by the disciplining
20 authority or relating to license holders reported to the disciplining
21 authority by the program for cause, shall be released to the
22 disciplining authority at the request of the disciplining authority.
23 Records held by the disciplining authority under this section shall be
24 exempt from chapter 42.56 RCW and shall not be subject to discovery by
25 subpoena except by the license holder.

26 (5) "Substance abuse," as used in this section, means the
27 impairment, as determined by the disciplining authority, of a license
28 holder's professional services by an addiction to, a dependency on, or
29 the use of alcohol, legend drugs, or controlled substances.

30 (6) This section does not affect an employer's right or ability to
31 make employment-related decisions regarding a license holder. This
32 section does not restrict the authority of the disciplining authority
33 to take disciplinary action for any other unprofessional conduct.

34 (7) A person who, in good faith, reports information or takes
35 action in connection with this section is immune from civil liability
36 for reporting information or taking the action.

37 (a) The immunity from civil liability provided by this section

1 shall be liberally construed to accomplish the purposes of this section
2 and the persons entitled to immunity shall include:

- 3 (i) An approved monitoring treatment program;
- 4 (ii) The professional association operating the program;
- 5 (iii) Members, employees, or agents of the program or association;
- 6 (iv) Persons reporting a license holder as being possibly impaired
7 or providing information about the license holder's impairment; and
- 8 (v) Professionals supervising or monitoring the course of the
9 impaired license holder's treatment or rehabilitation.

10 (b) The courts are strongly encouraged to impose sanctions on
11 clients and their attorneys whose allegations under this subsection are
12 not made in good faith and are without either reasonable objective,
13 substantive grounds, or both.

14 (c) The immunity provided in this section is in addition to any
15 other immunity provided by law.

16 NEW SECTION. **Sec. 8.** A new section is added to chapter 43.43 RCW
17 to read as follows:

18 (1) Upon a guilty plea or conviction of a person for any felony
19 crime involving homicide under chapter 9A.32 RCW, assault under chapter
20 9A.36 RCW, kidnapping under chapter 9A.40 RCW, sex offenses under
21 chapter 9A.44 RCW, burglary or trespass under chapter 9A.52 RCW, theft
22 or robbery under chapter 9A.56 RCW, or fraud under chapter 9A.60 RCW
23 the prosecuting attorney shall notify the state patrol of such guilty
24 pleas or convictions.

25 (2) When the state patrol receives information that a person has
26 pled guilty to or been convicted of one of the felony crimes under
27 subsection (1) of this section, the state patrol shall transmit that
28 information to the department of health. It is the duty of the
29 department of health to identify whether the person holds a credential
30 issued by a disciplining authority listed under RCW 18.130.040, and
31 provide this information to the disciplining authority that issued the
32 credential to the person who pled guilty or was convicted of a crime
33 listed in subsection (1) of this section.

34 NEW SECTION. **Sec. 9.** A new section is added to chapter 18.130 RCW
35 to read as follows:

36 (1) When developing its biennial budget request for appropriation

1 of the health professions account created in RCW 43.70.320, beginning
2 in the 2007-2009 budget and continuing in subsequent biennia, the
3 department shall specify the number of full-time employees designated
4 as investigators and attorneys and the costs associated with supporting
5 their activities. The department shall also specify the additional
6 full-time employees designated as investigators and attorneys that are
7 required to achieve a staffing level that is able to respond promptly,
8 competently, and appropriately to the workload associated with health
9 professions disciplinary activities and the costs associated with
10 supporting disciplinary activities. In identifying the need for
11 additional staff, the department shall develop a formula based on its
12 prior experience with staff levels compared to the number of providers,
13 complaints, investigations, and other criteria that the department
14 determines is relevant to staffing level decisions. The department
15 must request additional funds for activities that most critically
16 impact public health and safety. The budget request must specify the
17 methodology used for each biennium.

18 (2) The joint legislative audit and review committee, in
19 consultation with the department, shall report to the legislature by
20 December 1, 2010, with recommendations for formulas for determining
21 appropriate staffing levels for investigators and attorneys at the
22 department of health involved in the health professions disciplinary
23 process to achieve prompt, competent, and appropriate responses to
24 complaints of unprofessional conduct. The report must be based upon
25 the department's prior experience with staff levels compared to the
26 number of providers, complaints, investigations, and other criteria
27 that the department finds are relevant to determining appropriate
28 staffing levels.

29 (3) This section expires July 1, 2011.

30 NEW SECTION. **Sec. 10.** The following acts or parts of acts are
31 each repealed:

32 (1) RCW 18.57.174 (Duty to report unprofessional conduct--
33 Exceptions) and 2000 c 171 s 20 & 1986 c 300 s 9; and

34 (2) RCW 18.71.0193 (Duty to report unprofessional conduct--
35 Exceptions) and 1994 sp.s. c 9 s 327 & 1986 c 300 s 5.

1 NEW SECTION. **Sec. 11.** Section 7 of this act takes effect July 1,
2 2006.

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