

CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 2974

59th Legislature
2006 Regular Session

Passed by the House March 4, 2006
Yeas 65 Nays 30

Speaker of the House of Representatives

Passed by the Senate March 3, 2006
Yeas 45 Nays 3

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Richard Nafziger, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 2974** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

**Secretary of State
State of Washington**

SUBSTITUTE HOUSE BILL 2974

AS AMENDED BY THE SENATE

Passed Legislature - 2006 Regular Session

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.

38 (d) Reporting under this section is not required by:

1 (i) Any entity with a peer review committee, quality improvement
2 committee or other similarly designated professional review committee,
3 or by a license holder who is a member of such committee, during the
4 investigative phase of the respective committee's operations if the
5 investigation is completed in a timely manner; or

6 (ii) An impaired practitioner program or voluntary substance abuse
7 monitoring program approved by a disciplining authority under RCW
8 18.130.175 if the license holder is currently enrolled in the treatment
9 program, so long as the license holder actively participates in the
10 treatment program and the license holder's impairment does not
11 constitute a clear and present danger to the public health, safety, or
12 welfare.

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

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

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

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

26 (ii) Any disqualification from participation in the federal
27 medicare program, under Title XVIII of the federal social security act
28 or the federal medicaid program, under Title XIX of the federal social
29 security act.

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

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

35 Any individual who applies for a license or temporary practice
36 permit or holds a license or temporary practice permit and is
37 prohibited from practicing a health care profession in another state

1 because of an act of unprofessional conduct that is substantially
2 equivalent to an act of unprofessional conduct prohibited by this
3 chapter or any of the chapters specified in RCW 18.130.040 is
4 prohibited from practicing a health care profession in this state until
5 proceedings of the appropriate disciplining authority have been
6 completed under RCW 18.130.050.

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

9 The disciplining authority has the following authority:

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

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

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

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

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

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

23 (7) To take emergency action ordering summary suspension of a
24 license, or restriction or limitation of the (~~licensee's~~) license
25 holder's practice pending proceedings by the disciplining authority.
26 Consistent with section 3 of this act, a disciplining authority shall
27 issue a summary suspension of the license or temporary practice permit
28 of a license holder prohibited from practicing a health care profession
29 in another state, federal, or foreign jurisdiction because of an act of
30 unprofessional conduct that is substantially equivalent to an act of
31 unprofessional conduct prohibited by this chapter or any of the
32 chapters specified in RCW 18.130.040. The summary suspension remains
33 in effect until proceedings by the Washington disciplining authority
34 have been completed;

35 (8) To use a presiding officer as authorized in RCW 18.130.095(3)
36 or the office of administrative hearings as authorized in chapter 34.12
37 RCW to conduct hearings. The disciplining authority shall make the

1 final decision regarding disposition of the license unless the
2 disciplining authority elects to delegate in writing the final decision
3 to the presiding officer;

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

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

9 (11) To contract with licensees or other persons or organizations
10 to provide services necessary for the monitoring and supervision of
11 licensees who are placed on probation, whose professional activities
12 are restricted, or who are for any authorized purpose subject to
13 monitoring by the disciplining authority;

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

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

19 (14) To designate individuals authorized to sign subpoenas and
20 statements of charges;

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

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

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

34 (1) A person, including but not limited to consumers, licensees,
35 corporations, organizations, health care facilities, impaired
36 practitioner programs, or voluntary substance abuse monitoring programs
37 approved by disciplining authorities, and state and local governmental

1 agencies, may submit a written complaint to the disciplining authority
2 charging a license holder or applicant with unprofessional conduct and
3 specifying the grounds therefor or to report information to the
4 disciplining authority, or voluntary substance abuse monitoring
5 program, or an impaired practitioner program approved by the
6 disciplining authority, which indicates that the license holder may not
7 be able to practice his or her profession with reasonable skill and
8 safety to consumers as a result of a mental or physical condition. If
9 the disciplining authority determines that the complaint merits
10 investigation, or if the disciplining authority has reason to believe,
11 without a formal complaint, that a license holder or applicant may have
12 engaged in unprofessional conduct, the disciplining authority shall
13 investigate to determine whether there has been unprofessional conduct.
14 In determining whether or not to investigate, the disciplining
15 authority shall consider any prior complaints received by the
16 disciplining authority, any prior findings of fact under RCW
17 18.130.110, any stipulations to informal disposition under RCW
18 18.130.172, and any comparable action taken by other state disciplining
19 authorities.

20 (2) Notwithstanding subsection (1) of this section, the
21 disciplining authority shall initiate an investigation in every
22 instance where the disciplining authority receives information that a
23 health care provider has been disqualified from participating in the
24 federal medicare program, under Title XVIII of the federal social
25 security act, or the federal medicaid program, under Title XIX of the
26 federal social security act.

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

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

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

37 (1) Revocation of the license;

- 1 (2) Suspension of the license for a fixed or indefinite term;
- 2 (3) Restriction or limitation of the practice;
- 3 (4) Requiring the satisfactory completion of a specific program of
- 4 remedial education or treatment;
- 5 (5) The monitoring of the practice by a supervisor approved by the
- 6 disciplining authority;
- 7 (6) Censure or reprimand;
- 8 (7) Compliance with conditions of probation for a designated period
- 9 of time;
- 10 (8) Payment of a fine for each violation of this chapter, not to
- 11 exceed five thousand dollars per violation. Funds received shall be
- 12 placed in the health professions account;
- 13 (9) Denial of the license request;
- 14 (10) Corrective action;
- 15 (11) Refund of fees billed to and collected from the consumer;
- 16 (12) A surrender of the practitioner's license in lieu of other
- 17 sanctions, which must be reported to the federal data bank.

18 Any of the actions under this section may be totally or partly
19 stayed by the disciplining authority. Safeguarding the public's health
20 and safety is the paramount responsibility of every disciplining
21 authority and in determining what action is appropriate, the
22 disciplining authority must first consider what sanctions are necessary
23 to protect or compensate the public. Only after such provisions have
24 been made may the disciplining authority consider and include in the
25 order requirements designed to rehabilitate the license holder or
26 applicant. All costs associated with compliance with orders issued
27 under this section are the obligation of the license holder or
28 applicant.

29 The licensee or applicant may enter into a stipulated disposition
30 of charges that includes one or more of the sanctions of this section,
31 but only after a statement of charges has been issued and the licensee
32 has been afforded the opportunity for a hearing and has elected on the
33 record to forego such a hearing. The stipulation shall either contain
34 one or more specific findings of unprofessional conduct or inability to
35 practice, or a statement by the licensee acknowledging that evidence is
36 sufficient to justify one or more specified findings of unprofessional
37 conduct or inability to practice. The stipulation entered into

1 pursuant to this subsection shall be considered formal disciplinary
2 action for all purposes.

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

5 (1) In lieu of disciplinary action under RCW 18.130.160 and if the
6 disciplining authority determines that the unprofessional conduct may
7 be the result of substance abuse, the disciplining authority may refer
8 the license holder to a voluntary substance abuse monitoring program
9 approved by the disciplining authority.

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

36 (2) In addition to approving substance abuse monitoring programs
37 that may receive referrals from the disciplining authority, the

1 disciplining authority may establish by rule requirements for
2 participation of license holders who are not being investigated or
3 monitored by the disciplining authority for substance abuse. License
4 holders voluntarily participating in the approved programs without
5 being referred by the disciplining authority shall not be subject to
6 disciplinary action under RCW 18.130.160 for their substance abuse, and
7 shall not have their participation made known to the disciplining
8 authority, if they meet the requirements of this section and the
9 program in which they are participating.

10 (3) The license holder shall sign a waiver allowing the program to
11 release information to the disciplining authority if the licensee does
12 not comply with the requirements of this section or is unable to
13 practice with reasonable skill or safety. The substance abuse program
14 shall report to the disciplining authority any license holder who fails
15 to comply with the requirements of this section or the program or who,
16 in the opinion of the program, is unable to practice with reasonable
17 skill or safety. License holders shall report to the disciplining
18 authority if they fail to comply with this section or do not complete
19 the program's requirements. License holders may, upon the agreement of
20 the program and disciplining authority, reenter the program if they
21 have previously failed to comply with this section.

22 (4) The treatment and pretreatment records of license holders
23 referred to or voluntarily participating in approved programs shall be
24 confidential, shall be exempt from chapter 42.56 RCW, and shall not be
25 subject to discovery by subpoena or admissible as evidence except for
26 monitoring records reported to the disciplining authority for cause as
27 defined in subsection (3) of this section. Monitoring records relating
28 to license holders referred to the program by the disciplining
29 authority or relating to license holders reported to the disciplining
30 authority by the program for cause, shall be released to the
31 disciplining authority at the request of the disciplining authority.
32 Records held by the disciplining authority under this section shall be
33 exempt from chapter 42.56 RCW and shall not be subject to discovery by
34 subpoena except by the license holder.

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

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

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

8 (a) The immunity from civil liability provided by this section
9 shall be liberally construed to accomplish the purposes of this section
10 and the persons entitled to immunity shall include:

- 11 (i) An approved monitoring treatment program;
- 12 (ii) The professional association operating the program;
- 13 (iii) Members, employees, or agents of the program or association;
- 14 (iv) Persons reporting a license holder as being possibly impaired
15 or providing information about the license holder's impairment; and
- 16 (v) Professionals supervising or monitoring the course of the
17 impaired license holder's treatment or rehabilitation.

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

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

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

26 (1) Upon a guilty plea or conviction of a person for any felony
27 crime involving homicide under chapter 9A.32 RCW, assault under chapter
28 9A.36 RCW, kidnapping under chapter 9A.40 RCW, or sex offenses under
29 chapter 9A.44 RCW, the prosecuting attorney shall notify the state
30 patrol of such guilty pleas or convictions.

31 (2) When the state patrol receives information that a person has
32 pled guilty to or been convicted of one of the felony crimes under
33 subsection (1) of this section, the state patrol shall transmit that
34 information to the department of health. It is the duty of the
35 department of health to identify whether the person holds a credential
36 issued by a disciplining authority listed under RCW 18.130.040, and

1 provide this information to the disciplining authority that issued the
2 credential to the person who pled guilty or was convicted of a crime
3 listed in subsection (1) of this section.

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

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

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

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

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

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

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

7 NEW SECTION. **Sec. 11.** Section 7 of this act takes effect July 1,
8 2006.

--- END ---