

**E2SHB 1103** - S COMM AMD

By Committee on Health & Long-Term Care

1       Strike everything after the enacting clause and insert the  
2 following:

3       "NEW SECTION. **Sec. 1.** From statehood, Washington has  
4 constitutionally provided for the regulation of the practice of  
5 medicine and the sale of drugs and medicines. This constitutional  
6 recognition of the importance of regulating health care practitioners  
7 derives not from providers' financial interest in their license, but  
8 from the greater need to protect the public health and safety by  
9 assuring that the health care providers and medicines that society  
10 relies upon meet certain standards of quality.

11       The legislature finds that the issuance of a license to practice as  
12 a health care provider should be a means to ensure quality and not be  
13 a means to ensure financial benefit for providers. Statutory and  
14 administrative requirements provide sufficient due process protections  
15 to prevent the unwarranted revocation of a health care provider's  
16 license. While those due process protections must be maintained, there  
17 is an urgent need to return to the original constitutional mandate that  
18 patients be ensured quality from their health care providers. The  
19 legislature has recognized and medical malpractice reforms have  
20 recognized the importance of maintaining the public trust by setting a  
21 higher level of accountability for health care providers who are  
22 subjects of serious complaints. The legislature also recognizes the  
23 importance of transparency, quality, and patient safety through such  
24 measures as a new adverse events reporting system. Reforms to the  
25 health care provider licensing system is another step toward improving  
26 quality in health care. Therefore, the legislature intends to increase  
27 the authority of those engaged in the regulation of health care  
28 providers to swiftly identify and remove health care providers who pose  
29 a risk to the public.

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

3        For all professions, the secretary has the sole authority to  
4 initiate investigation, investigate, and determine appropriate  
5 disposition for any complaint: (1) Against a health care professional  
6 who has had three prior complaints within a five-year period; (2)  
7 related to the death of a patient; or (3) involving sexual misconduct.  
8 Appropriate disposition may include closure, stipulations permitted by  
9 RCW 18.130.172, or issuance of a statement of charges. For such  
10 complaints, the secretary has the authority to take emergency action  
11 ordering summary suspension of a license, or restriction or limitation  
12 of the license holder's practice pending proceedings by the  
13 disciplining authority.

14        **Sec. 3.**    RCW 18.130.020 and 1995 c 336 s 1 are each amended to read  
15 as follows:

16        Unless the context clearly requires otherwise, the definitions in  
17 this section apply throughout this chapter.

18        (1) "Disciplining authority" means the agency, board, or commission  
19 having the authority to take disciplinary action against a holder of,  
20 or applicant for, a professional or business license upon a finding of  
21 a violation of this chapter or a chapter specified under RCW  
22 18.130.040.

23        (2) "Department" means the department of health.

24        (3) "Secretary" means the secretary of health or the secretary's  
25 designee.

26        (4) "Board" means any of those boards specified in RCW 18.130.040.

27        (5) "Commission" means any of the commissions specified in RCW  
28 18.130.040.

29        (6) "Unlicensed practice" means:

30        (a) Practicing a profession or operating a business identified in  
31 RCW 18.130.040 without holding a valid, unexpired, unrevoked, and  
32 unsuspended license to do so; or

33        (b) Representing to a consumer, through offerings, advertisements,  
34 or use of a professional title or designation, that the individual is  
35 qualified to practice a profession or operate a business identified in  
36 RCW 18.130.040, without holding a valid, unexpired, unrevoked, and  
37 unsuspended license to do so.

1 (7) "Disciplinary action" means sanctions identified in RCW  
2 18.130.160.

3 (8) "Practice review" means an investigative audit of records  
4 related to the complaint, without prior identification of specific  
5 patient or consumer names, or an assessment of the conditions,  
6 circumstances, and methods of the professional's practice related to  
7 the complaint, to determine whether unprofessional conduct may have  
8 been committed.

9 (9) "Health agency" means city and county health departments and  
10 the department of health.

11 (10) "License," "licensing," and "licensure" shall be deemed  
12 equivalent to the terms "license," "licensing," "licensure,"  
13 "certificate," "certification," and "registration" as those terms are  
14 defined in RCW 18.120.020.

15 (11) "False, fraudulent, or misleading advertising" means a  
16 statement that includes a misrepresentation of fact that is likely to  
17 mislead or deceive because of a failure to disclose material facts,  
18 that is intended or likely to create false or unjustified expectations  
19 of favorable results, or that includes representations or implications  
20 that in reasonable probability will cause an ordinarily prudent person  
21 to misunderstand or to be deceived.

22 **Sec. 4.** RCW 18.130.050 and 2006 c 99 s 4 are each amended to read  
23 as follows:

24 Except as provided in section 2 of this act, the disciplining  
25 authority identified in RCW 18.130.040 has the following authority:

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

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

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

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

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

1 (6) In the course of investigating or consulting and assisting with  
2 the investigation of a complaint or report of unprofessional conduct,  
3 to conduct practice reviews;

4 (7) To take emergency action ordering summary suspension of a  
5 license, or restriction or limitation of the license holder's practice  
6 pending proceedings by the disciplining authority. Consistent with RCW  
7 18.130.370, a disciplining authority shall issue a summary suspension  
8 of the license or temporary practice permit of a license holder  
9 prohibited from practicing a health care profession in another state,  
10 federal, or foreign jurisdiction because of an act of unprofessional  
11 conduct that is substantially equivalent to an act of unprofessional  
12 conduct prohibited by this chapter or any of the chapters specified in  
13 RCW 18.130.040. The summary suspension remains in effect until  
14 proceedings by the Washington disciplining authority have been  
15 completed;

16 (8) To use a presiding officer as authorized in RCW 18.130.095(3)  
17 or the office of administrative hearings as authorized in chapter 34.12  
18 RCW to conduct hearings. The disciplining authority shall make the  
19 final decision regarding disposition of the license unless the  
20 disciplining authority elects to delegate in writing the final decision  
21 to the presiding officer;

22 (9) To use individual members of the boards to direct  
23 investigations or to provide consultation and assistance with  
24 investigations when requested by the secretary. However, the member of  
25 the board shall not subsequently participate in the hearing of the  
26 case;

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

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

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

35 (13) To grant or deny license applications, and in the event of a  
36 finding of unprofessional conduct by an applicant or license holder, to  
37 impose any sanction against a license applicant or license holder

1 provided by this chapter. After January 1, 2008, all sanctions must be  
2 issued in accordance with section 12 of this act;

3 (14) To designate individuals authorized to sign subpoenas and  
4 statements of charges;

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

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

16 **Sec. 5.** RCW 18.130.060 and 2006 c 99 s 1 are each amended to read  
17 as follows:

18 In addition to the authority specified in section 2 of this act and  
19 RCW 18.130.050, the secretary has the following (~~additional~~)  
20 authority:

21 (1) To employ such investigative, administrative, and clerical  
22 staff as necessary for the enforcement of this chapter. The secretary  
23 must, whenever practical, make primary assignments on a long-term basis  
24 to foster the development and maintenance of staff expertise. To  
25 ensure continuity and best practices, the secretary will regularly  
26 evaluate staff assignments and workload distribution;

27 (2) Upon the request of a board or commission, to appoint pro tem  
28 members to participate as members of a panel of the board or commission  
29 in connection with proceedings specifically identified in the request.  
30 Individuals so appointed must meet the same minimum qualifications as  
31 regular members of the board or commission. Pro tem members appointed  
32 for matters under this chapter are appointed for a term of no more than  
33 one year. No pro tem member may serve more than four one-year terms.  
34 While serving as board or commission members pro tem, persons so  
35 appointed have all the powers, duties, and immunities, and are entitled  
36 to the emoluments, including travel expenses in accordance with RCW  
37 43.03.050 and 43.03.060, of regular members of the board or commission.

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

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

19 (4) To conduct investigations and practice reviews at the direction  
20 of the disciplining authority and to issue subpoenas, administer oaths,  
21 and take depositions in the course of conducting those investigations  
22 and practice reviews at the direction of the disciplining authority.  
23 The secretary may request the consultation and assistance of the  
24 appropriate disciplining authority, and where standards of practice or  
25 clinical expertise is necessary, the secretary shall assure that the  
26 board or commission is actively involved in the investigation;

27 (5) To review results of investigations conducted under this  
28 chapter and determine the appropriate disposition, which may include  
29 closure, notice of correction, stipulations permitted by RCW  
30 18.130.172, or issuance of a statement of charges;

31 (6) 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); and



1 18.130.040(2) or a series of arrests that when considered together  
2 demonstrate a pattern of behavior that, without investigation, may pose  
3 a risk to the safety of the license holder's patients.

4 (b) If the background check conducted pursuant to subsection (3) of  
5 this section reveals any information related to unprofessional conduct  
6 that has not been previously disclosed to the disciplining authority,  
7 it shall take appropriate disciplinary action against the license  
8 holder.

9 (5) The department shall:

10 (a) Require the applicant or license holder to submit full sets of  
11 fingerprints if necessary to complete the background check;

12 (b) Require the applicant to submit any fees for background check  
13 activities conducted pursuant to subsection (1) of this section, except  
14 as precluded by RCW 43.70.110, and other information required by the  
15 state patrol;

16 (c) Notify the applicant of the results of the background check.  
17 If any background check reveals a criminal record, the department shall  
18 send the applicant a copy of the record upon request; and

19 (d) Restrict use of the background check results to determining the  
20 individual's suitability for a license and to conducting disciplinary  
21 functions.

22 **Sec. 7.** RCW 18.130.080 and 2006 c 99 s 5 are each amended to read  
23 as follows:

24 (1) (~~(A person, including but not limited to consumers, licensees,~~  
25 ~~corporations, organizations, health care facilities, impaired~~  
26 ~~practitioner programs, or voluntary substance abuse monitoring programs~~  
27 ~~approved by disciplining authorities, and state and local governmental~~  
28 ~~agencies,)) (a) A patient or a patient's guardian or legal  
29 representative may submit a signed written complaint, or an impaired  
30 practitioner program, or a voluntary substance abuse monitoring program  
31 approved by a disciplining authority, may submit a written complaint to  
32 the disciplining authority charging a license holder or applicant with  
33 unprofessional conduct and specifying the grounds therefor or to report  
34 information to the disciplining authority, or voluntary substance abuse  
35 monitoring program, or an impaired practitioner program approved by the  
36 disciplining authority, which indicates that the license holder may not~~



1 be able to practice his or her profession with reasonable skill and  
2 safety to consumers as a result of a mental or physical condition.

3 (b)(i) Every license holder, corporation, organization, health care  
4 facility, and state and local governmental agency that employs a  
5 license holder shall report to the secretary when any license holder's  
6 services have been terminated or restricted based upon a determination  
7 that the license holder has either committed an act or acts that may  
8 constitute unprofessional conduct or that the license holder may not be  
9 able to practice his or her profession with reasonable skill and safety  
10 to consumers as a result of a mental or physical condition.

11 (ii) All reports required by (b)(i) of this subsection must be  
12 submitted to the secretary as soon as possible, but no later than  
13 twenty days after a determination has been made. A report should  
14 contain the following information, if known:

15 (A) The name, address, and telephone number of the person making  
16 the report;

17 (B) The name, address, and telephone number of the license holder  
18 being reported;

19 (C) The case number of any patient whose treatment is the subject  
20 of the report;

21 (D) A brief description or summary of the facts that gave rise to  
22 the issuance of the report, including dates of occurrences;

23 (E) If court action is involved, the name of the court in which the  
24 action is filed, the date of filing, and the docket number; and

25 (F) Any further information that would aid in the evaluation of the  
26 report.

27 (iii) Mandatory reports required by (b)(i) of this subsection are  
28 exempt from public inspection and copying to the extent permitted under  
29 chapter 42.56 RCW or to the extent that public inspection or copying of  
30 the report would invade or violate a person's right to privacy as set  
31 forth in RCW 42.56.050.

32 (2) If the disciplining authority determines that ((the)) there is  
33 a reasonable basis to investigate the signed written complaint of a  
34 patient or a patient's guardian or legal representative or that a  
35 complaint submitted by an impaired practitioner program, or a voluntary  
36 substance abuse monitoring program approved by a disciplining  
37 authority, merits investigation, or if the disciplining authority has  
38 reason to believe based upon the criteria specified in subsection (3)

1 of this section, without a formal complaint, that a license holder or  
2 applicant may have engaged in unprofessional conduct, the disciplining  
3 authority shall investigate to determine whether there has been  
4 unprofessional conduct. In determining whether or not to investigate,  
5 the disciplining authority shall consider any prior complaints received  
6 by the disciplining authority, any prior findings of fact under RCW  
7 18.130.110, any stipulations to informal disposition under RCW  
8 18.130.172, and any comparable action taken by other state disciplining  
9 authorities.

10 ~~((+2+))~~ (3) Notwithstanding subsection ~~((+1+))~~ (2) of this section,  
11 the disciplining authority shall initiate an investigation in every  
12 instance where:

13 (a) The disciplining authority receives information that a health  
14 care provider has been disqualified from participating 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; or

18 (b) There have been multiple complaints, arrests, adverse actions  
19 by employers, or other actions that may not have resulted in a formal  
20 adjudication of wrongdoing, but when considered together demonstrate a  
21 pattern of similar conduct that, without investigation, may pose a risk  
22 to the safety of the license holder's patients.

23 (4) In conducting the investigation, the disciplining authority may  
24 consult with one or more practitioners who utilize the procedure in  
25 question in the complaint in their practice to determine whether or not  
26 the license holder or applicant against whom the complaint has been  
27 filed is guilty of unprofessional conduct.

28 (5) In order to sustain a complaint against a license holder or  
29 applicant, the disciplining authority must provide the testimony of at  
30 least one practitioner who utilizes the procedure that is the subject  
31 of the complaint in question in his or her practice, or when there is  
32 no practitioner who utilizes the procedure in question that is readily  
33 available, a practitioner who practices complementary alternative  
34 medicine may be used, to establish that the license holder or applicant  
35 is guilty of unprofessional conduct.

36 (6) Failure of an entity to submit a mandatory report to the  
37 secretary under subsection (1)(b) of this section is punishable by a

1 civil penalty not to exceed five hundred dollars and constitutes  
2 unprofessional conduct.

3 (7) If a report has been made by a hospital to the department under  
4 RCW 70.41.210, a report to the secretary under subsection (1)(b) of  
5 this section is not required.

6 ~~((3) A person who files a complaint or reports information under~~  
7 ~~this section in good faith is immune from suit in any civil action~~  
8 ~~related to the filing or contents of the complaint.))~~ (8) A person is  
9 immune from civil liability, whether direct or derivative, for  
10 providing information in good faith to the disciplining authority under  
11 this section. A complaint against a license holder or applicant based  
12 solely on the use of a procedure, in the absence of any proof of harm  
13 to a patient, is not in good faith. A complaint against a license  
14 holder or applicant is not in good faith if it is frivolous or if it is  
15 filed for an improper purpose, such as to harass or to impede  
16 legitimate use of a procedure by a licensee in his or her practice.

17 **Sec. 8.** RCW 18.130.160 and 2006 c 99 s 6 and 2006 c 8 s 104 are  
18 each reenacted and amended to read as follows:

19 Upon a finding, after hearing, that a license holder or applicant  
20 has committed unprofessional conduct or is unable to practice with  
21 reasonable skill and safety due to a physical or mental condition, the  
22 disciplining authority ~~((may consider the imposition of sanctions,~~  
23 ~~taking into account))~~ shall issue an order including sanctions adopted  
24 in accordance with the schedule adopted under section 12 of this act  
25 giving proper consideration to any prior findings of fact under RCW  
26 18.130.110, any stipulations to informal disposition under RCW  
27 18.130.172, and any action taken by other in-state or out-of-state  
28 disciplining authorities(~~, and issue an~~)). The order (~~providing~~)  
29 must provide for one or any combination of the following, as directed  
30 by the schedule:

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

- 1 (6) Censure or reprimand;
- 2 (7) Compliance with conditions of probation for a designated period  
3 of time;
- 4 (8) Payment of a fine for each violation of this chapter, not to  
5 exceed five thousand dollars per violation. Funds received shall be  
6 placed in the health professions account;
- 7 (9) Denial of the license request;
- 8 (10) Corrective action;
- 9 (11) Refund of fees billed to and collected from the consumer;
- 10 (12) A surrender of the practitioner's license in lieu of other  
11 sanctions, which must be reported to the federal data bank.

12 Any of the actions under this section may be totally or partly  
13 stayed by the disciplining authority. Safeguarding the public's health  
14 and safety is the paramount responsibility of every disciplining  
15 authority ~~((and))~~. In determining what action is appropriate, the  
16 disciplining authority must consider the schedule adopted under section  
17 12 of this act. Where the schedule allows flexibility in determining  
18 the appropriate sanction, the disciplining authority must first  
19 consider what sanctions are necessary to protect or compensate the  
20 public. Only after such provisions have been made may the disciplining  
21 authority consider and include in the order requirements designed to  
22 rehabilitate the license holder or applicant. All costs associated  
23 with compliance with orders issued under this section are the  
24 obligation of the license holder or applicant.

25 The disciplining authority may determine that a case presents  
26 unique circumstances that the schedule adopted under section 12 of this  
27 act does not adequately address. The disciplining authority may  
28 deviate from the schedule adopted under section 12 of this act when  
29 selecting appropriate sanctions, but the disciplining authority must  
30 issue a written explanation of the basis for not following the  
31 schedule.

32 The ~~((licensee))~~ license holder or applicant may enter into a  
33 stipulated disposition of charges that includes one or more of the  
34 sanctions of this section, but only after a statement of charges has  
35 been issued and the ~~((licensee))~~ license holder has been afforded the  
36 opportunity for a hearing and has elected on the record to forego such  
37 a hearing. The stipulation shall either contain one or more specific  
38 findings of unprofessional conduct or inability to practice, or a

1 statement by the ((licensee)) license holder acknowledging that  
2 evidence is sufficient to justify one or more specified findings of  
3 unprofessional conduct or inability to practice. The stipulation  
4 entered into pursuant to this subsection shall be considered formal  
5 disciplinary action for all purposes.

6 **Sec. 9.** RCW 18.130.170 and 1995 c 336 s 8 are each amended to read  
7 as follows:

8 (1) If the disciplining authority believes a license holder or  
9 applicant may be unable to practice with reasonable skill and safety to  
10 consumers by reason of any mental or physical condition, a statement of  
11 charges in the name of the disciplining authority shall be served on  
12 the license holder or applicant and notice shall also be issued  
13 providing an opportunity for a hearing. The hearing shall be limited  
14 to the sole issue of the capacity of the license holder or applicant to  
15 practice with reasonable skill and safety. If the disciplining  
16 authority determines that the license holder or applicant is unable to  
17 practice with reasonable skill and safety for one of the reasons stated  
18 in this subsection, the disciplining authority shall impose such  
19 sanctions under RCW 18.130.160 as is deemed necessary to protect the  
20 public.

21 (2)(a) In investigating or adjudicating a complaint or report that  
22 a license holder or applicant may be unable to practice with reasonable  
23 skill or safety by reason of any mental or physical condition, the  
24 disciplining authority may require a license holder or applicant to  
25 submit to a mental or physical examination by one or more licensed or  
26 certified health professionals designated by the disciplining  
27 authority. The license holder or applicant shall be provided written  
28 notice of the disciplining authority's intent to order a mental or  
29 physical examination, which notice shall include: (i) A statement of  
30 the specific conduct, event, or circumstances justifying an  
31 examination; (ii) a summary of the evidence supporting the disciplining  
32 authority's concern that the license holder or applicant may be unable  
33 to practice with reasonable skill and safety by reason of a mental or  
34 physical condition, and the grounds for believing such evidence to be  
35 credible and reliable; (iii) a statement of the nature, purpose, scope,  
36 and content of the intended examination; (iv) a statement that the  
37 license holder or applicant has the right to respond in writing within

1 twenty days to challenge the disciplining authority's grounds for  
2 ordering an examination or to challenge the manner or form of the  
3 examination; and (v) a statement that if the license holder or  
4 applicant timely responds to the notice of intent, then the license  
5 holder or applicant will not be required to submit to the examination  
6 while the response is under consideration.

7 (b) Upon submission of a timely response to the notice of intent to  
8 order a mental or physical examination, the license holder or applicant  
9 shall have an opportunity to respond to or refute such an order by  
10 submission of evidence or written argument or both. The evidence and  
11 written argument supporting and opposing the mental or physical  
12 examination shall be reviewed by either a panel of the disciplining  
13 authority members who have not been involved with the allegations  
14 against the license holder or applicant or a neutral decision maker  
15 approved by the disciplining authority. The reviewing panel of the  
16 disciplining authority or the approved neutral decision maker may, in  
17 its discretion, ask for oral argument from the parties. The reviewing  
18 panel of the disciplining authority or the approved neutral decision  
19 maker shall prepare a written decision as to whether: There is  
20 reasonable cause to believe that the license holder or applicant may be  
21 unable to practice with reasonable skill and safety by reason of a  
22 mental or physical condition, or the manner or form of the mental or  
23 physical examination is appropriate, or both.

24 (c) Upon receipt by the disciplining authority of the written  
25 decision, or upon the failure of the license holder or applicant to  
26 timely respond to the notice of intent, the disciplining authority may  
27 issue an order requiring the license holder or applicant to undergo a  
28 mental or physical examination. All such mental or physical  
29 examinations shall be narrowly tailored to address only the alleged  
30 mental or physical condition and the ability of the license holder or  
31 applicant to practice with reasonable skill and safety. An order of  
32 the disciplining authority requiring the license holder or applicant to  
33 undergo a mental or physical examination is not a final order for  
34 purposes of appeal. The cost of the examinations ordered by the  
35 disciplining authority shall be paid out of the health professions  
36 account. In addition to any examinations ordered by the disciplining  
37 authority, the ((licensee)) license holder may submit physical or

1 mental examination reports from licensed or certified health  
2 professionals of the license holder's or applicant's choosing and  
3 expense.

4 (d) If the disciplining authority finds that a license holder or  
5 applicant has failed to submit to a properly ordered mental or physical  
6 examination, then the disciplining authority may order appropriate  
7 action or discipline under RCW 18.130.180(9), unless the failure was  
8 due to circumstances beyond the person's control. However, no such  
9 action or discipline may be imposed unless the license holder or  
10 applicant has had the notice and opportunity to challenge the  
11 disciplining authority's grounds for ordering the examination, to  
12 challenge the manner and form, to assert any other defenses, and to  
13 have such challenges or defenses considered by either a panel of the  
14 disciplining authority members who have not been involved with the  
15 allegations against the license holder or applicant or a neutral  
16 decision maker approved by the disciplining authority, as previously  
17 set forth in this section. Further, the action or discipline ordered  
18 by the disciplining authority shall not be more severe than a  
19 suspension of the license, certification, registration or application  
20 until such time as the license holder or applicant complies with the  
21 properly ordered mental or physical examination.

22 (e) Nothing in this section shall restrict the power of a  
23 disciplining authority to act in an emergency under RCW 34.05.422(4),  
24 34.05.479, and 18.130.050(7).

25 (f) A determination by a court of competent jurisdiction that a  
26 license holder or applicant is mentally incompetent or (~~mentally ill~~)  
27 an individual with mental illness is presumptive evidence of the  
28 license holder's or applicant's inability to practice with reasonable  
29 skill and safety. An individual affected under this section shall at  
30 reasonable intervals be afforded an opportunity, at his or her expense,  
31 to demonstrate that the individual can resume competent practice with  
32 reasonable skill and safety to the consumer.

33 (3) For the purpose of subsection (2) of this section, an applicant  
34 or license holder governed by this chapter, by making application,  
35 practicing, or filing a license renewal, is deemed to have given  
36 consent to submit to a mental, physical, or psychological examination  
37 when directed in writing by the disciplining authority and further to  
38 have waived all objections to the admissibility or use of the examining

1 health professional's testimony or examination reports by the  
2 disciplining authority on the ground that the testimony or reports  
3 constitute privileged communications.

4 **Sec. 10.** RCW 18.130.172 and 2000 c 171 s 29 are each amended to  
5 read as follows:

6 (1) Prior to serving a statement of charges under RCW 18.130.090 or  
7 18.130.170, the ((~~disciplinary authority~~)) secretary may furnish a  
8 statement of allegations to the licensee or applicant along with a  
9 detailed summary of the evidence relied upon to establish the  
10 allegations and a proposed stipulation for informal resolution of the  
11 allegations. These documents shall be exempt from public disclosure  
12 until such time as the allegations are resolved either by stipulation  
13 or otherwise.

14 (2) The ((~~disciplinary~~)) disciplining authority and the applicant  
15 or licensee may stipulate that the allegations may be disposed of  
16 informally in accordance with this subsection. The stipulation shall  
17 contain a statement of the facts leading to the filing of the  
18 complaint; the act or acts of unprofessional conduct alleged to have  
19 been committed or the alleged basis for determining that the applicant  
20 or licensee is unable to practice with reasonable skill and safety; a  
21 statement that the stipulation is not to be construed as a finding of  
22 either unprofessional conduct or inability to practice; an  
23 acknowledgement that a finding of unprofessional conduct or inability  
24 to practice, if proven, constitutes grounds for discipline under this  
25 chapter; and an agreement on the part of the licensee or applicant that  
26 the sanctions set forth in RCW 18.130.160, except RCW 18.130.160 (1),  
27 (2), (6), and (8), may be imposed as part of the stipulation, except  
28 that no fine may be imposed but the licensee or applicant may agree to  
29 reimburse the ((~~disciplinary~~)) disciplining authority the costs of  
30 investigation and processing the complaint up to an amount not  
31 exceeding one thousand dollars per allegation; and an agreement on the  
32 part of the ((~~disciplinary~~)) disciplining authority to forego further  
33 disciplinary proceedings concerning the allegations. A stipulation  
34 entered into pursuant to this subsection shall not be considered formal  
35 disciplinary action.

36 (3) If the licensee or applicant declines to agree to disposition



1 of the charges by means of a stipulation pursuant to subsection (2) of  
2 this section, the ((disciplinary)) disciplining authority may proceed  
3 to formal disciplinary action pursuant to RCW 18.130.090 or 18.130.170.

4 (4) Upon execution of a stipulation under subsection (2) of this  
5 section by both the licensee or applicant and the ((disciplinary))  
6 disciplining authority, the complaint is deemed disposed of and shall  
7 become subject to public disclosure on the same basis and to the same  
8 extent as other records of the ((disciplinary)) disciplining authority.  
9 Should the licensee or applicant fail to pay any agreed reimbursement  
10 within thirty days of the date specified in the stipulation for  
11 payment, the ((disciplinary)) disciplining authority may seek  
12 collection of the amount agreed to be paid in the same manner as  
13 enforcement of a fine under RCW 18.130.165.

14 **Sec. 11.** RCW 18.130.180 and 1995 c 336 s 9 are each amended to  
15 read as follows:

16 The following conduct, acts, or conditions constitute  
17 unprofessional conduct for any license holder or applicant under the  
18 jurisdiction of this chapter:

19 (1) The commission of any act involving moral turpitude,  
20 dishonesty, or corruption relating to the practice of the person's  
21 profession, whether the act constitutes a crime or not. If the act  
22 constitutes a crime, conviction in a criminal proceeding is not a  
23 condition precedent to disciplinary action. Upon such a conviction,  
24 however, the judgment and sentence is conclusive evidence at the  
25 ensuing disciplinary hearing of the guilt of the license holder or  
26 applicant of the crime described in the indictment or information, and  
27 of the person's violation of the statute on which it is based. For the  
28 purposes of this section, conviction includes all instances in which a  
29 plea of guilty or nolo contendere is the basis for the conviction and  
30 all proceedings in which the sentence has been deferred or suspended.  
31 Nothing in this section abrogates rights guaranteed under chapter 9.96A  
32 RCW;

33 (2) Misrepresentation or concealment of a material fact in  
34 obtaining a license or in reinstatement thereof;

35 (3) All advertising which is false, fraudulent, or misleading;

36 (4) Incompetence, negligence, or malpractice which results in  
37 injury to a patient or which creates an unreasonable risk that a

1 patient may be harmed. The use of a (~~nontraditional treatment~~)  
2 procedure by itself shall not constitute unprofessional conduct,  
3 provided that it does not result in injury to a patient (~~or create an~~  
4 ~~unreasonable risk that a patient may be harmed~~) and the patient has  
5 signed a writing that complies with the requirements set forth in RCW  
6 7.70.060. The writing constitutes prima facie evidence that the  
7 patient gave his or her consent to the treatment that is the subject of  
8 the complaint;

9 (5) Suspension, revocation, or restriction of the individual's  
10 license to practice any health care profession by competent authority  
11 in any state, federal, or foreign jurisdiction, a certified copy of the  
12 order, stipulation, or agreement being conclusive evidence of the  
13 revocation, suspension, or restriction;

14 (6) The possession, use, prescription for use, or distribution of  
15 controlled substances or legend drugs in any way other than for  
16 legitimate or therapeutic purposes, diversion of controlled substances  
17 or legend drugs, the violation of any drug law, or prescribing  
18 controlled substances for oneself;

19 (7) Violation of any state or federal statute or administrative  
20 rule regulating the profession in question, including any statute or  
21 rule defining or establishing standards of patient care or professional  
22 conduct or practice;

23 (8) Failure to cooperate with the disciplining authority by:

24 (a) Not furnishing any papers or documents;

25 (b) Not furnishing in writing a full and complete explanation  
26 covering the matter contained in the complaint filed with the  
27 disciplining authority;

28 (c) Not responding to subpoenas issued by the disciplining  
29 authority, whether or not the recipient of the subpoena is the accused  
30 in the proceeding; or

31 (d) Not providing reasonable and timely access for authorized  
32 representatives of the disciplining authority seeking to perform  
33 practice reviews at facilities utilized by the license holder;

34 (9) Failure to comply with an order issued by the disciplining  
35 authority or a stipulation for informal disposition entered into with  
36 the disciplining authority;

37 (10) Aiding or abetting an unlicensed person to practice when a  
38 license is required;

- 1 (11) Violations of rules established by any health agency;
- 2 (12) Practice beyond the scope of practice as defined by law or  
3 rule;
- 4 (13) Misrepresentation or fraud in any aspect of the conduct of the  
5 business or profession;
- 6 (14) Failure to adequately supervise auxiliary staff to the extent  
7 that the consumer's health or safety is at risk;
- 8 (15) Engaging in a profession involving contact with the public  
9 while suffering from a contagious or infectious disease involving  
10 serious risk to public health;
- 11 (16) Promotion for personal gain of any unnecessary or  
12 inefficacious drug, device, treatment, procedure, or service;
- 13 (17) Conviction of any gross misdemeanor or felony relating to the  
14 practice of the person's profession. For the purposes of this  
15 subsection, conviction includes all instances in which a plea of guilty  
16 or nolo contendere is the basis for conviction and all proceedings in  
17 which the sentence has been deferred or suspended. Nothing in this  
18 section abrogates rights guaranteed under chapter 9.96A RCW;
- 19 (18) The procuring, or aiding or abetting in procuring, a criminal  
20 abortion;
- 21 (19) The offering, undertaking, or agreeing to cure or treat  
22 disease by a secret method, procedure, treatment, or medicine, or the  
23 treating, operating, or prescribing for any health condition by a  
24 method, means, or procedure which the licensee refuses to divulge upon  
25 demand of the disciplining authority;
- 26 (20) The willful betrayal of a practitioner-patient privilege as  
27 recognized by law;
- 28 (21) Violation of chapter 19.68 RCW;
- 29 (22) Interference with an investigation or disciplinary proceeding  
30 by willful misrepresentation of facts before the disciplining authority  
31 or its authorized representative, or by the use of threats or  
32 harassment against any patient or witness to prevent them from  
33 providing evidence in a disciplinary proceeding or any other legal  
34 action, or by the use of financial inducements to any patient or  
35 witness to prevent or attempt to prevent him or her from providing  
36 evidence in a disciplinary proceeding;
- 37 (23) Current misuse of:
- 38 (a) Alcohol;

1 (b) Controlled substances; or

2 (c) Legend drugs;

3 (24) Abuse of a client or patient or sexual contact with a client  
4 or patient;

5 (25) Acceptance of more than a nominal gratuity, hospitality, or  
6 subsidy offered by a representative or vendor of medical or health-  
7 related products or services intended for patients, in contemplation of  
8 a sale or for use in research publishable in professional journals,  
9 where a conflict of interest is presented, as defined by rules of the  
10 disciplining authority, in consultation with the department, based on  
11 recognized professional ethical standards;

12 (26) Filing a complaint against another licensee that is not made  
13 in good faith because the complaint is frivolous or for an improper  
14 purpose, such as to harass or to impede legitimate use of a procedure  
15 in his or her practice.

16 NEW SECTION. Sec. 12. A new section is added to chapter 18.130  
17 RCW to read as follows:

18 (1) The disciplining authorities identified in RCW 18.130.040(2)(b)  
19 shall review the secretary's sanctioning guidelines and shall  
20 collaborate to develop a schedule that defines appropriate ranges of  
21 sanctions that are applicable upon a determination that a license  
22 holder has committed unprofessional conduct as defined in this chapter  
23 or the chapters specified in RCW 18.130.040(2). The schedule must  
24 identify aggravating and mitigating circumstances that may enhance or  
25 reduce the sanction imposed by the disciplining authority for  
26 unprofessional conduct. The schedule must apply to all disciplining  
27 authorities. In addition, the disciplining authorities shall make  
28 provisions for instances in which there are multiple findings of  
29 unprofessional conduct. When establishing the proposed schedule, the  
30 disciplining authorities shall consider maintaining consistent sanction  
31 determinations that maximize the protection of the public's health and  
32 while maintaining the rights of health care providers of the different  
33 health professions. The disciplining authorities shall submit the  
34 proposed schedule and recommendations to modify or adopt the  
35 secretary's guidelines to the secretary no later than November 15,  
36 2007.

1 (2) The secretary shall adopt rules establishing a uniform sanction  
2 schedule to be applied to all disciplinary actions commenced under this  
3 chapter after January 1, 2008. The secretary shall review the proposed  
4 schedule developed in accordance with subsection (1) of this section  
5 and may modify the schedule as necessary to provide greater protection  
6 to the public. The secretary shall use his or her emergency  
7 rule-making authority pursuant to the procedures under chapter 34.05  
8 RCW, to adopt rules that take effect no later than January 1, 2008, to  
9 implement the schedule.

10 (3) The disciplining authority may determine that a case presents  
11 unique circumstances that the schedule adopted under this section does  
12 not adequately address. The disciplining authority may deviate from  
13 the schedule adopted under this section when selecting appropriate  
14 sanctions, but the disciplining authority must issue a written  
15 explanation in the order of the basis for not following the schedule.

16 (4) The secretary shall report to the legislature by January 15,  
17 2008, on the sanctioning schedule adopted.

18 **Sec. 13.** RCW 18.130.310 and 1989 1st ex.s. c 9 s 313 are each  
19 amended to read as follows:

20 (1) Subject to RCW 40.07.040, the disciplinary authority shall  
21 submit a biennial report to the legislature on its proceedings during  
22 the biennium, detailing the number of complaints made, investigated,  
23 and adjudicated and manner of disposition. In addition, the report  
24 must provide data on the department's background check activities  
25 conducted under section 6 of this act and the effectiveness of those  
26 activities in identifying potential license holders who may not be  
27 qualified to practice safely. The report may include recommendations  
28 for improving the disciplinary process, including proposed legislation.  
29 The department shall develop a uniform report format.

30 (2) Each health profession board and commission identified in RCW  
31 18.130.040(2)(b) shall submit a biennial report to complement the  
32 report required under subsection (1) of this section. Each report must  
33 identify the disciplinary activities of the individual board or  
34 commission, rule-making and policy activities, and receipts and  
35 expenditures for the profession.



1 practice of a health care practitioner, including his or her voluntary  
2 resignation, while under investigation or the subject of proceedings  
3 regarding unprofessional conduct under RCW 18.130.180 is accepted by  
4 the hospital.

5 (4) Failure of a hospital to comply with this section is punishable  
6 by a civil penalty not to exceed (~~two~~) five hundred (~~fifty~~)  
7 dollars.

8 (5) A hospital, its chief administrator, or its executive officer  
9 who files a report under this section is immune from suit, whether  
10 direct or derivative, in any civil action related to the filing or  
11 contents of the report, unless the conviction, determination, or  
12 finding on which the report and its content are based is proven to not  
13 have been made in good faith. The prevailing party in any action  
14 brought alleging the conviction, determination, finding, or report was  
15 not made in good faith, shall be entitled to recover the costs of  
16 litigation, including reasonable attorneys' fees.

17 (6) The department shall forward reports made under subsection (1)  
18 of this section to the appropriate disciplining authority designated  
19 under Title 18 RCW within fifteen days of the date the report is  
20 received by the department. The department shall notify a hospital  
21 that has made a report under subsection (1) of this section of the  
22 results of the disciplining authority's case disposition decision  
23 within fifteen days after the case disposition. Case disposition is  
24 the decision whether to issue a statement of charges, take informal  
25 action, or close the complaint without action against a practitioner.  
26 In its biennial report to the legislature under RCW 18.130.310, the  
27 department shall specifically identify the case dispositions of reports  
28 made by hospitals under subsection (1) of this section.

29 (7) The department shall not increase hospital license fees to  
30 carry out this section before July 1, 2007.

31 NEW SECTION. **Sec. 16.** A new section is added to chapter 18.130  
32 RCW to read as follows:

33 Any license holder performing a gynecological examination or  
34 procedure must give the patient the opportunity to request that a third  
35 party of her choice be present in the room where the examination or  
36 procedure is being conducted.

1        NEW SECTION.    **Sec. 17.**    (1) The Washington state medical quality  
2 assurance commission shall conduct a clinical competency examination  
3 pilot project.    The project must:

4        (a) Be developed in consultation with the University of Washington  
5 school of medicine;

6        (b) Establish the skills to be examined and measurement standards  
7 and methods by which clinical competency is assessed; and

8        (c) Include criteria for determining when a clinical competency  
9 examination may be required, including whether requiring the  
10 examination will assist the Washington state medical quality assurance  
11 commission in carrying out its duties, protecting the public, or  
12 promoting quality assurance within the profession.

13        (2)(a) By December 1, 2007, the Washington state medical quality  
14 assurance commission shall submit an interim report to the appropriate  
15 committees of the legislature on the commission's progress in  
16 developing clinical competency examinations and its plans for  
17 implementation.

18        (b) By December 1, 2009, the Washington state medical quality  
19 assurance commission shall submit a final report to the appropriate  
20 committees of the legislature on the effectiveness of the clinical  
21 competency examinations at identifying potentially harmful physicians  
22 and its ability to avoid harm to the public through remedial measures  
23 or other risk avoidance measures.    The report must include data  
24 regarding the types of procedures most frequently subject to the  
25 program and the methods for identifying physicians in need of the  
26 program.    The report must also include recommendations as to whether  
27 the program should be permanently implemented and whether the program  
28 should be expanded to other professions and any considerations for  
29 expanding the program.

30        NEW SECTION.    **Sec. 18.**    A new section is added to chapter 42.52 RCW  
31 to read as follows:

32        Members of a health profession board or commission as identified in  
33 RCW 18.130.040(2)(b) may express their professional opinions to an  
34 elected official about the work of the board or commission on which the  
35 member serves, even if those opinions differ from the department of  
36 health's official position.    Such communication shall be to inform the



1 elected official and not to lobby in support or opposition to any  
2 initiative to the legislature.

3 **Sec. 19.** RCW 43.70.320 and 1993 c 492 s 411 are each amended to  
4 read as follows:

5 (1) There is created in the state treasury an account to be known  
6 as the health professions account. All fees received by the department  
7 for health professions licenses, registration, certifications,  
8 renewals, or examinations and the civil penalties assessed and  
9 collected by the department under RCW 18.130.190 shall be forwarded to  
10 the state treasurer who shall credit such moneys to the health  
11 professions account.

12 (2) All expenses incurred in carrying out the health professions  
13 licensing activities of the department shall be paid from the account  
14 as authorized by legislative appropriation, except as provided in  
15 subsection (4) of this section. Any residue in the account shall be  
16 accumulated and shall not revert to the general fund at the end of the  
17 biennium.

18 (3) The secretary shall biennially prepare a budget request based  
19 on the anticipated costs of administering the health professions  
20 licensing activities of the department which shall include the  
21 estimated income from health professions fees.

22 (4) The secretary may spend unappropriated funds in the health  
23 professions account to meet unanticipated costs when revenues exceed  
24 more than fifteen percent over the department's estimated six-year  
25 spending projections. Unanticipated costs shall be limited to spending  
26 as authorized in subsection (3) of this section for anticipated costs.

27 **Sec. 20.** RCW 18.71.017 and 2000 c 171 s 23 are each amended to  
28 read as follows:

29 (1) The commission may adopt such rules as are not inconsistent  
30 with the laws of this state as may be determined necessary or proper to  
31 carry out the purposes of this chapter. The commission is the  
32 successor in interest of the board of medical examiners and the medical  
33 disciplinary board. All contracts, undertakings, agreements, rules,  
34 regulations, and policies continue in full force and effect on July 1,  
35 1994, unless otherwise repealed or rejected by this chapter or by the  
36 commission.

1       (2) The commission may adopt rules governing the administration of  
2 sedation and anesthesia in the offices of persons licensed under this  
3 chapter, including necessary training and equipment.

4       **Sec. 21.** RCW 18.57.005 and 1986 c 259 s 94 are each amended to  
5 read as follows:

6       The board shall have the following powers and duties:

7       (1) To administer examinations to applicants for licensure under  
8 this chapter;

9       (2) To make such rules and regulations as are not inconsistent with  
10 the laws of this state as may be deemed necessary or proper to carry  
11 out the purposes of this chapter;

12       (3) To establish and administer requirements for continuing  
13 professional education as may be necessary or proper to insure the  
14 public health and safety as a prerequisite to granting and renewing  
15 licenses under this chapter: PROVIDED, That such rules shall not  
16 require a licensee under this chapter to engage in continuing education  
17 related to or provided by any specific branch, school, or philosophy of  
18 medical practice or its political and/or professional organizations,  
19 associations, or societies;

20       (4) To adopt rules governing the administration of sedation and  
21 anesthesia in the offices of persons licensed under this chapter,  
22 including necessary training and equipment;

23       (5) To keep an official record of all its proceedings, which record  
24 shall be evidence of all proceedings of the board which are set forth  
25 therein.

26       **Sec. 22.** RCW 18.22.015 and 1990 c 147 s 5 are each amended to read  
27 as follows:

28       The board shall:

29       (1) Administer all laws placed under its jurisdiction;

30       (2) Prepare, grade, and administer or determine the nature,  
31 grading, and administration of examinations for applicants for  
32 podiatric physician and surgeon licenses;

33       (3) Examine and investigate all applicants for podiatric physician  
34 and surgeon licenses and certify to the secretary all applicants it  
35 judges to be properly qualified;

1 (4) Adopt any rules which it considers necessary or proper to carry  
2 out the purposes of this chapter;

3 (5) Adopt rules governing the administration of sedation and  
4 anesthesia in the offices of persons licensed under this chapter,  
5 including necessary training and equipment;

6 (6) Determine which schools of podiatric medicine and surgery will  
7 be approved.

8 NEW SECTION. Sec. 23. Except for section 6 of this act, which  
9 takes effect January 1, 2008, this act is necessary for the immediate  
10 preservation of the public peace, health, or safety, or support of the  
11 state government and its existing public institutions, and takes effect  
12 immediately."

**E2SHB 1103** - S COMM AMD

By Committee on Health & Long-Term Care

13 On page 1, line 1 of the title, after "professions;" strike the  
14 remainder of the title and insert "amending RCW 18.130.020, 18.130.050,  
15 18.130.060, 18.130.080, 18.130.170, 18.130.172, 18.130.180, 18.130.310,  
16 70.41.210, 43.70.320, 18.71.017, 18.57.005, and 18.22.015; reenacting  
17 and amending RCW 18.130.160; adding new sections to chapter 18.130 RCW;  
18 adding a new section to chapter 42.52 RCW; creating new sections;  
19 prescribing penalties; providing an effective date; and declaring an  
20 emergency."

--- END ---