

SENATE BILL REPORT

E2SHB 1103

As Reported By Senate Committee On:
Health & Long-Term Care, March 29, 2007

Title: An act relating to health professions.

Brief Description: Increasing the authority of regulators to remove health care practitioners who pose a risk to the public.

Sponsors: House Committee on Appropriations (originally sponsored by Representatives Campbell, Green, Kenney, Hudgins, Appleton, Schual-Berke and Cody).

Brief History: Passed House: 3/09/07, 70-27.

Committee Activity: Health & Long-Term Care: 3/15/07, 3/29/07 [DPA-WM, DNP, w/oRec].

SENATE COMMITTEE ON HEALTH & LONG-TERM CARE

Majority Report: Do pass as amended and be referred to Committee on Ways & Means.

Signed by Senators Keiser, Chair; Franklin, Vice Chair; Pflug, Ranking Minority Member; Fairley, Kastama, Kohl-Welles and Parlette.

Minority Report: Do not pass.

Signed by Senator Marr.

Minority Report: That it be referred without recommendation.

Signed by Senator Carrell.

Staff: Edith Rice (786-7444)

Background: The Uniform Disciplinary Act (UDA) governs disciplinary actions for all 57 categories of credentialed health care providers. The UDA defines acts of unprofessional conduct, establishes sanctions for such acts, and provides general procedures for addressing complaints and taking disciplinary actions against a credentialed health care provider. Responsibilities in the disciplinary process are divided between the Secretary of Health (Secretary) and the 14 health profession boards and commissions (collectively known as "disciplining authorities") according to the profession that the health care provider is a member of and the relevant step in the disciplinary process.

Health care providers are subject to several complaint and reporting requirements. Any person or organization may submit a complaint to a disciplining authority which charges a credentialed health care provider or applicant with unprofessional conduct. Complaints may

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

also provide information related to the health care provider's or applicant's inability to practice safely as a result of a physical or mental condition.

Credentialed health care providers must report any conviction, determination, or other finding that another credentialed health care provider has committed an act of unprofessional conduct or information about his or her inability to practice safely as a result of a physical or mental condition. Other entities have specific obligations to report information related to acts of unprofessional conduct by a credentialed health care provider. Hospitals must report any restriction, suspension, limitation, or termination of certain health care providers that are based on a conviction, determination, or finding by the hospital that the health care provider engaged in unprofessional conduct.

Professional liability insurance institutions must report any final malpractice claims against a physician that resulted in the payment of more than \$20,000 or three or more final claims resulting in payments of any amount within a five year period.

Summary of Engrossed Second Substitute Bill: Disciplinary Responsibilities: The authority of health profession boards and commissions to investigate allegations of unprofessional conduct, appoint members to direct investigations, and conduct practice reviews is reduced to a consultative and assisting role. The Secretary of Health (Secretary) is authorized to conduct investigations and practice reviews for all health professions. The Secretary must assure the active involvement of the appropriate boards and commissions when an investigation involves standards of practice or where clinical expertise are necessary. Complaints and reports of unprofessional conduct are to be sent to the Secretary rather than the boards and commissions. After the completion of an investigation, the Secretary is authorized to determine the appropriate disposition of the case. The authority of the boards and commissions to order a summary suspension of a health care provider's credential is transferred to the Secretary.

Background Checks: Applicants for an initial credential to practice a health profession must receive a background check from the Washington State Patrol (WSP) prior to receiving the credential. The Department of Health (Department) must specify those circumstances in which a state background check is inadequate and an electronic fingerprint-based national background check through the WSP and the Federal Bureau of Investigations must be conducted. Such situations include cases in which an applicant has a criminal record in Washington or has recently lived out-of-state. The Department must conduct an annual review of a representative sample of health care providers who have previously received a background check. When making license issuance determinations, the disciplining authority must consider the results of any background checks that reveal either a conviction for a crime that constitutes unprofessional conduct or a series of arrests that demonstrate a pattern of behavior that may present a risk of harm to the public. The disciplining authority must take disciplinary action against a health care provider when information received from a review of previously checked providers reveals a failure to report required information about arrests, convictions, or other determinations to the Department.

Sanctioning Schedule: The disciplining authorities must establish a schedule to define appropriate ranges of sanctions to apply to a credentialed health care provider for acts of unprofessional conduct. The schedule must identify aggravating and mitigating circumstances to reduce or enhance a sanction for each act of unprofessional conduct. The Secretary must

adopt emergency rules to implement the schedule by January 1, 2008. Disciplining authorities must apply sanctions in accordance with the schedule, unless unique circumstances justify deviating from them.

Reporting Unprofessional Conduct: Credential holders, corporations, organizations, health care facilities, and government agencies are required to report when they have knowledge that a credential holder or an applicant for a credential has engaged in unprofessional conduct or have information that they cannot practice with reasonable skill and safety due to a physical or mental condition. Failure to report is punishable by a maximum fine of \$500. Credentialed health care providers are required to report any arrests, convictions, and other determinations by law enforcement agencies to the appropriate disciplining authority.

Other Provisions: The Medical Quality Assurance Commission, the Podiatric Medical Board, and the Board of Osteopathic Medicine and Surgery are authorized to adopt rules to govern office-based sedation and anesthesia.

The Secretary must initiate an investigation in cases in which complaints, arrests, or other actions not resulting in a formal adjudication against a health care provider demonstrate a pattern of behavior that may present a risk to his or her patients.

The Medical Quality Assurance Commission (MQAC) must develop a clinical competency examination pilot project in consultation with the University of Washington School of Medicine. The project must establish the skills to be examined and criteria for determining when an examination is required. MQAC must report to the Legislature by December 1, 2009, with recommendations for implementing the program.

Biennial disciplinary reports are made annual and must include data related to the Department's background check activities and their effectiveness.

Each board and profession must publish an annual report of its disciplinary activities, rulemaking and policy activities, and receipts and expenditures for the profession.

When performing a gynecological examination or procedure, a credentialed health care provider must ensure that a third party is present unless the patient signs a written waiver.

Members of health profession boards and commissions are allowed to express their opinions regarding the work of the board or commission to elected officials even if it is different from the Department's official position. Members of boards and commissions may not lobby for or against legislative proposals.

EFFECT OF CHANGES MADE BY RECOMMENDED AMENDMENT(S) AS PASSED COMMITTEE (Health & Long-Term Care): The Secretary of the Department of Health must have sole authority regarding disciplinary action for all professions for any complaints involving:

- death of a patient; or
- sexual misconduct.

The disciplinary boards and commissions will retain authority for all other complaints.

License holders performing a gynecological examination or procedure must give the patient the opportunity to request that a third party of their choosing be present.

A technical amendment clarifies that the board or commission can adopt rules affecting delivery of sedation and anesthesia by any provider (such as a nurse anesthetist) in a doctor's office.

A definition is provided for false, fraudulent, or misleading advertising.

A patient or patient's guardian or legal representative may submit a signed written complaint.

Disciplinary authorities conducting an investigation into unprofessional conduct may consult with other practitioners who use the procedure in question.

In order to establish that a licensee or applicant is guilty of unprofessional conduct, disciplinary authorities must provide the testimony of at least one practitioner who uses the procedure which is the subject of the complaint, or a practitioner of complementary alternative medicine may be used to provide such testimony.

Complaints based solely on the use of a procedure without proof of harm to a patient is deemed to be not in good faith.

Filing a complaint against another licensee for an improper or frivolous reason, or not in good faith, constitutes unprofessional conduct for license holders.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: The bill contains an emergency clause and takes effect immediately.

Staff Summary of Public Testimony: PRO: We need to do a better job certifying health professionals. This bill was a result of the License to Harm series of articles in *The Seattle Times* last spring. The bill was written with patients in mind. Claims should be resolved quickly and consistently. There is an inherent systemic bias, which often makes it difficult to respond timely. This bill allows DOH to have the right tools in place to get the job done.

CON: Relegating the commission to advisory or consultative status is uncommon. The bill is unwarranted. Minorities and women are well represented. This would be a big step backwards. The Governor has requested that there be an audit of the Medical Quality Assurance Commission. We should wait until that audit is complete before making these changes. The Secretary of the Department of Health doesn't have expertise to look at this wide range of issues. We don't like this transfer of authority. Instead of having less control, we think boards and commissions should have more control of staff and funding.

Persons Testifying: PRO: Representative Campbell, prime sponsor; Laurie Jinkins, Assistant Secretary Department Of Health.

CON: Frank Hensley, Medical Quality Assurance Commission; Anne Tan Piazza, Washington State Nurses Association; Lucy Homans, Washington State Psychological

Association; Len Eddinger, Washington State Medical Association; Gail McGaffick, Washington State Podiatric Medical Association, Washington State Osteopathic Medical Association; Melissa Johnson, Physical Therapy Association of Washington; Brad Tower, Optometric Physicians of Washington.