
SECOND SUBSTITUTE HOUSE BILL 1103

State of Washington 60th Legislature 2007 Regular Session

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

READ FIRST TIME 02/26/07.

1 AN ACT Relating to health professions; amending RCW 18.130.050,
2 18.130.060, 18.130.080, 18.130.090, 18.130.170, 18.130.172, 18.130.310,
3 70.41.210, and 43.70.320; reenacting and amending RCW 18.130.160;
4 adding new sections to chapter 18.130 RCW; adding a new section to
5 chapter 42.52 RCW; creating new sections; prescribing penalties;
6 providing an effective date; and declaring an emergency.

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

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

16 The legislature finds that the issuance of a license to practice as
17 a health care provider should be a means to ensure quality and not be
18 a means to ensure financial benefit for providers. Statutory and
19 administrative requirements provide sufficient due process protections

1 to prevent the unwarranted revocation of a health care provider's
2 license. While those due process protections must be maintained, there
3 is an urgent need to return to the original constitutional mandate that
4 patients be ensured quality from their health care providers. The
5 legislature has recognized and medical malpractice reforms have
6 recognized the importance of quality and patient safety through such
7 measures as a new adverse events reporting system. Reforms to the
8 health care provider licensing system is another step toward improving
9 quality in health care. Therefore, the legislature intends to increase
10 the authority of those engaged in the regulation of health care
11 providers to swiftly identify and remove health care providers who pose
12 a risk to the public.

13 **Sec. 2.** RCW 18.130.050 and 2006 c 99 s 4 are each amended to read
14 as follows:

15 The disciplining authority has the following authority:

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

18 (2) To ~~((investigate))~~ use individual members of the boards and
19 commissions to provide consultation and assistance with investigations
20 of all complaints or reports of unprofessional conduct as defined in
21 this chapter as requested by the secretary and to hold hearings as
22 provided in this chapter. If the secretary determines that the
23 complaint involves standards of practice or that clinical expertise is
24 necessary, the secretary shall assure that the board or commission is
25 actively involved in the investigation;

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

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

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

32 (6) In the course of ~~((investigating))~~ consulting and assisting
33 with the investigation of a complaint or report of unprofessional
34 conduct, to conduct practice reviews as requested by the secretary;

35 (7) ~~((To take emergency action ordering summary suspension of a~~
36 ~~license, or restriction or limitation of the license holder's practice~~
37 ~~pending proceedings by the disciplining authority. Consistent with RCW~~

1 ~~18.130.370, a disciplining authority shall issue a summary suspension~~
2 ~~of the license or temporary practice permit of a license holder~~
3 ~~prohibited from practicing a health care profession in another state,~~
4 ~~federal, or foreign jurisdiction because of an act of unprofessional~~
5 ~~conduct that is substantially equivalent to an act of unprofessional~~
6 ~~conduct prohibited by this chapter or any of the chapters specified in~~
7 ~~RCW 18.130.040. The summary suspension remains in effect until~~
8 ~~proceedings by the Washington disciplining authority have been~~
9 ~~completed;~~

10 ~~(8))~~ To use a presiding officer as authorized in RCW 18.130.095(3)
11 or the office of administrative hearings as authorized in chapter 34.12
12 RCW to conduct hearings. The disciplining authority shall make the
13 final decision regarding disposition of the license unless the
14 disciplining authority elects to delegate in writing the final decision
15 to the presiding officer;

16 ~~((9))~~ (8) To use individual members of the boards to ~~((direct))~~
17 provide consultation and assistance with investigations as requested by
18 the secretary. However, the member of the board shall not subsequently
19 participate in the hearing of the case;

20 ~~((10))~~ (9) To enter into contracts for professional services
21 determined to be necessary for adequate enforcement of this chapter;

22 ~~((11))~~ (10) To contract with licensees or other persons or
23 organizations to provide services necessary for the monitoring and
24 supervision of licensees who are placed on probation, whose
25 professional activities are restricted, or who are for any authorized
26 purpose subject to monitoring by the disciplining authority;

27 ~~((12))~~ (11) To adopt standards of professional conduct or
28 practice;

29 ~~((13))~~ (12) To grant or deny license applications, and in the
30 event of a finding of unprofessional conduct by an applicant or license
31 holder, to impose any sanction against a license applicant or license
32 holder provided by this chapter. After January 1, 2008, all sanctions
33 must be issued in accordance with section 10 of this act;

34 ~~((14))~~ (13) To designate individuals authorized to sign subpoenas
35 and statements of charges;

36 ~~((15))~~ (14) To establish panels consisting of three or more
37 members of the board to perform any duty or authority within the
38 board's jurisdiction under this chapter;

1 ~~((16))~~ (15) To review and audit the records of licensed health
2 facilities' or services' quality assurance committee decisions in which
3 a licensee's practice privilege or employment is terminated or
4 restricted. Each health facility or service shall produce and make
5 accessible to the disciplining authority the appropriate records and
6 otherwise facilitate the review and audit. Information so gained shall
7 not be subject to discovery or introduction into evidence in any civil
8 action pursuant to RCW 70.41.200(3).

9 **Sec. 3.** RCW 18.130.060 and 2006 c 99 s 1 are each amended to read
10 as follows:

11 In addition to the authority specified in RCW 18.130.050, the
12 secretary has the following additional authority:

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

19 (2) Upon the request of a board or commission, to appoint pro tem
20 members to participate as members of a panel of the board or commission
21 in connection with proceedings specifically identified in the request.
22 Individuals so appointed must meet the same minimum qualifications as
23 regular members of the board or commission. Pro tem members appointed
24 for matters under this chapter are appointed for a term of no more than
25 one year. No pro tem member may serve more than four one-year terms.
26 While serving as board or commission members pro tem, persons so
27 appointed have all the powers, duties, and immunities, and are entitled
28 to the emoluments, including travel expenses in accordance with RCW
29 43.03.050 and 43.03.060, of regular members of the board or commission.
30 The chairperson of a panel shall be a regular member of the board or
31 commission appointed by the board or commission chairperson. Panels
32 have authority to act as directed by the board or commission with
33 respect to ~~((all matters concerning the review, investigation, and~~
34 ~~adjudication of))~~ all complaints, allegations, charges, and matters
35 subject to the jurisdiction of the board or commission and within the
36 authority of the board or commission. The authority to act through
37 panels does not restrict the authority of the board or commission to

1 act as a single body at any phase of proceedings within the board's or
2 commission's jurisdiction. Board or commission panels may make interim
3 orders and issue final decisions with respect to matters and cases
4 delegated to the panel by the board or commission. Final decisions may
5 be appealed as provided in chapter 34.05 RCW, the administrative
6 procedure act;

7 (3) To establish fees to be paid for witnesses, expert witnesses,
8 and consultants used in any investigation and to establish fees to
9 witnesses in any agency adjudicative proceeding as authorized by RCW
10 34.05.446;

11 (4) To conduct investigations and practice reviews (~~at the~~
12 ~~direction of the disciplining authority~~) and to issue subpoenas,
13 administer oaths, and take depositions in the course of conducting
14 those investigations and practice reviews (~~at the direction of the~~
15 ~~disciplining authority~~). The secretary may request the consultation
16 and assistance of the appropriate disciplining authority, and where
17 standards of practice or clinical expertise is necessary, the secretary
18 shall assure that the board or commission is actively involved in the
19 investigation;

20 (5) To review results of investigations conducted under this
21 chapter and determine the appropriate disposition, which may include
22 closure, notice of correction, stipulations permitted by RCW
23 18.130.172, or issuance of a statement of charges;

24 (6) To take emergency action ordering summary suspension of a
25 license, or restriction or limitation of the license holder's practice
26 pending proceedings by the disciplining authority. Consistent with RCW
27 18.130.370, the secretary shall issue a summary suspension of the
28 license or temporary practice permit of a license holder prohibited
29 from practicing a health care profession in another state, federal, or
30 foreign jurisdiction because of an act of unprofessional conduct that
31 is substantially equivalent to an act of unprofessional conduct
32 prohibited by this chapter or any of the chapters specified in RCW
33 18.130.040. The summary suspension remains in effect until proceedings
34 by the Washington disciplining authority have been completed;

35 (7) To have the health professions regulatory program establish a
36 system to recruit potential public members, to review the
37 qualifications of such potential members, and to provide orientation to
38 those public members appointed pursuant to law by the governor or the

1 secretary to the boards and commissions specified in RCW
2 18.130.040(2)(b), and to the advisory committees and councils for
3 professions specified in RCW 18.130.040(2)(a); and

4 ~~((+6+))~~ (8) To adopt rules, in consultation with the disciplining
5 authorities, requiring every license holder to report information
6 identified in RCW 18.130.070.

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

9 (1)(a) The department shall establish requirements for each
10 applicant for an initial license to obtain a state background check
11 through the state patrol prior to the issuance of any license. The
12 background check may be fingerprint-based at the discretion of the
13 department.

14 (b) The department shall specify those situations where a
15 background check under (a) of this subsection is inadequate and an
16 applicant for an initial license must obtain an electronic fingerprint-
17 based national background check through the state patrol and federal
18 bureau of investigation. Situations where a background check is
19 inadequate may include instances where an applicant has recently lived
20 out-of-state or where the applicant has a criminal record in
21 Washington. The secretary shall issue a temporary practice permit to
22 an applicant who must have a national background check conducted if the
23 background check conducted under (a) of this subsection does not reveal
24 a criminal record in Washington, and if the applicant meets the
25 provisions of RCW 18.130.075.

26 (2) The department shall adopt rules to require license holders to
27 report to the disciplining authority any arrests, convictions, or other
28 determinations or findings by a law enforcement agency occurring after
29 the effective date of this section for a criminal offense. The report
30 must be made within fourteen days of the conviction.

31 (3) The department shall conduct an annual review of a
32 representative sample of all license holders who have previously
33 obtained a background check through the department. The selection of
34 the license holders to be reviewed shall be representative of all
35 categories of license holders and geographic locations.

36 (4)(a) When deciding whether or not to issue an initial license,
37 the disciplining authority shall consider the results of any background

1 check conducted pursuant to subsection (1) of this section that reveals
2 a conviction for any criminal offense that constitutes unprofessional
3 conduct under this chapter or the chapters specified in RCW
4 18.130.040(2) or a series of arrests that when considered together
5 demonstrate a pattern of behavior that, without investigation, may pose
6 a risk to the safety of the license holder's patients.

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

12 (5) The department shall:

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

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

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

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

25 **Sec. 5.** RCW 18.130.080 and 2006 c 99 s 5 are each amended to read
26 as follows:

27 ~~(1) ((A person, including but not limited to consumers, licensees,~~
28 ~~corporations, organizations, health care facilities, impaired~~
29 ~~practitioner programs, or voluntary substance abuse monitoring programs~~
30 ~~approved by disciplining authorities, and state and local governmental~~
31 ~~agencies,)) (a) An individual, an impaired practitioner program, or a~~
32 ~~voluntary substance abuse monitoring program approved by a disciplining~~
33 ~~authority,~~ may submit a written complaint to the ~~((disciplining~~
34 ~~authority)) secretary charging a license holder or applicant with~~
35 unprofessional conduct and specifying the grounds therefor or to report
36 information to the ~~((disciplining authority)) secretary, or voluntary~~
37 substance abuse monitoring program, or an impaired practitioner program

1 approved by the disciplining authority, which indicates that the
2 license holder may not be able to practice his or her profession with
3 reasonable skill and safety to consumers as a result of a mental or
4 physical condition.

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

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

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

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

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

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

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

27 (F) Any further information that would aid in the evaluation of the
28 report.

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

34 (2) If the ((disciplining authority)) secretary determines that
35 ((the)) a complaint submitted under subsection (1) of this section
36 merits investigation, or if the ((disciplining authority)) secretary
37 has reason to believe, without a formal complaint, that a license
38 holder or applicant may have engaged in unprofessional conduct, the

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

8 ((+2)) (3) Notwithstanding subsection ((+1)) (2) of this section,
9 the ((disciplining authority)) secretary shall initiate an
10 investigation in every instance where:

11 (a) The ((disciplining authority)) secretary receives information
12 that a health care provider has been disqualified from participating in
13 the federal medicare program, under Title XVIII of the federal social
14 security act, or the federal medicaid program, under Title XIX of the
15 federal social security act; or

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

21 (4) Failure of an entity to submit a mandatory report to the
22 secretary under subsection (1)(b) of this section is punishable by a
23 civil penalty not to exceed five hundred dollars and constitutes
24 unprofessional conduct.

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

28 ((-3) A person who files a complaint or reports information under
29 this section in good faith is immune from suit in any civil action
30 related to the filing or contents of the complaint.) (6) A person is
31 immune from civil liability, whether direct or derivative, for
32 providing information in good faith to the secretary under this
33 section.

34 **Sec. 6.** RCW 18.130.090 and 1993 c 367 s 1 are each amended to read
35 as follows:

36 (1) If the ((disciplining authority)) secretary determines, upon
37 investigation, that there is reason to believe a violation of RCW

1 18.130.180 has occurred, a statement of charge or charges shall be
2 prepared and served upon the license holder or applicant at the
3 earliest practical time. The statement of charge or charges shall be
4 accompanied by a notice that the license holder or applicant may
5 request a hearing to contest the charge or charges. The license holder
6 or applicant must file a request for hearing with the disciplining
7 authority within twenty days after being served the statement of
8 charges. If the twenty-day limit results in a hardship upon the
9 license holder or applicant, he or she may request for good cause an
10 extension not to exceed sixty additional days. If the disciplining
11 authority finds that there is good cause, it shall grant the extension.
12 The failure to request a hearing constitutes a default, whereupon the
13 disciplining authority may enter a decision on the basis of the facts
14 available to it.

15 (2) If a hearing is requested, the time of the hearing shall be
16 fixed by the disciplining authority as soon as convenient, but the
17 hearing shall not be held earlier than thirty days after service of the
18 charges upon the license holder or applicant.

19 **Sec. 7.** RCW 18.130.160 and 2006 c 99 s 6 and 2006 c 8 s 104 are
20 each reenacted and amended to read as follows:

21 Upon a finding, after hearing, that a license holder or applicant
22 has committed unprofessional conduct or is unable to practice with
23 reasonable skill and safety due to a physical or mental condition, the
24 disciplining authority (~~((may consider the imposition of sanctions,~~
25 ~~taking into account))~~) shall issue an order including sanctions adopted
26 in accordance with the schedule adopted under section 10 of this act
27 giving proper consideration to any prior findings of fact under RCW
28 18.130.110, any stipulations to informal disposition under RCW
29 18.130.172, and any action taken by other in-state or out-of-state
30 disciplining authorities(~~(, and issue an))~~). The order ((providing))
31 must provide for one or any combination of the following, as directed
32 by the schedule:

- 33 (1) Revocation of the license;
34 (2) Suspension of the license for a fixed or indefinite term;
35 (3) Restriction or limitation of the practice;
36 (4) Requiring the satisfactory completion of a specific program of
37 remedial education or treatment;

1 (5) The monitoring of the practice by a supervisor approved by the
2 disciplining authority;

3 (6) Censure or reprimand;

4 (7) Compliance with conditions of probation for a designated period
5 of time;

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

9 (9) Denial of the license request;

10 (10) Corrective action;

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

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

14 Any of the actions under this section may be totally or partly
15 stayed by the disciplining authority. Safeguarding the public's health
16 and safety is the paramount responsibility of every disciplining
17 authority ~~((and))~~. In determining what action is appropriate, the
18 disciplining authority must consider the schedule adopted under section
19 10 of this act. Where the schedule allows flexibility in determining
20 the appropriate sanction, the disciplining authority must first
21 consider what sanctions are necessary to protect or compensate the
22 public. Only after such provisions have been made may the disciplining
23 authority consider and include in the order requirements designed to
24 rehabilitate the license holder or applicant. All costs associated
25 with compliance with orders issued under this section are the
26 obligation of the license holder or applicant.

27 The disciplining authority may determine that a case presents
28 unique circumstances that the schedule adopted under section 10 of this
29 act does not adequately address. The disciplining authority may
30 deviate from the schedule adopted under section 10 of this act when
31 selecting appropriate sanctions, but the disciplining authority must
32 issue a written explanation of the basis for not following the
33 schedule.

34 The ~~((licensee))~~ license holder or applicant may enter into a
35 stipulated disposition of charges that includes one or more of the
36 sanctions of this section, but only after a statement of charges has
37 been issued and the ~~((licensee))~~ license holder has been afforded the
38 opportunity for a hearing and has elected on the record to forego such

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

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

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

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

1 and reliable; (iii) a statement of the nature, purpose, scope, and
2 content of the intended examination; (iv) a statement that the license
3 holder or applicant has the right to respond in writing within twenty
4 days to challenge the (~~(disciplining authority's)~~) secretary's grounds
5 for ordering an examination or to challenge the manner or form of the
6 examination; and (v) a statement that if the license holder or
7 applicant timely responds to the notice of intent, then the license
8 holder or applicant will not be required to submit to the examination
9 while the response is under consideration.

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

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

1 shall be paid out of the health professions account. In addition to
2 any examinations ordered by the (~~(disciplining authority)~~) secretary,
3 the (~~(licensee)~~) license holder may submit physical or mental
4 examination reports from licensed or certified health professionals of
5 the license holder's or applicant's choosing and expense.

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

24 (e) Nothing in this section shall restrict the power of (~~(a~~
25 ~~disciplining authority)~~) the secretary to act in an emergency under RCW
26 34.05.422(4), 34.05.479, and (~~(18.130.050(7))~~) 18.130.060(6).

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

35 (3) For the purpose of subsection (2) of this section, an applicant
36 or license holder governed by this chapter, by making application,
37 practicing, or filing a license renewal, is deemed to have given
38 consent to submit to a mental, physical, or psychological examination

1 when directed in writing by the ((~~disciplining authority~~)) secretary
2 and further to have waived all objections to the admissibility or use
3 of the examining health professional's testimony or examination reports
4 by the ((~~disciplining authority~~)) secretary on the ground that the
5 testimony or reports constitute privileged communications.

6 **Sec. 9.** RCW 18.130.172 and 2000 c 171 s 29 are each amended to
7 read as follows:

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

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

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

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

15 NEW SECTION. Sec. 10. A new section is added to chapter 18.130
16 RCW to read as follows:

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

36 (2) The secretary shall adopt rules establishing a uniform sanction
37 schedule to be applied to all disciplinary actions commenced under this

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

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

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

16 **Sec. 11.** RCW 18.130.310 and 1989 1st ex.s. c 9 s 313 are each
17 amended to read as follows:

18 (1) Subject to RCW 40.07.040, the disciplinary authority shall
19 submit (~~(a biennial)~~) an annual report to the legislature on its
20 proceedings during the (~~(biennium)~~) year, detailing the number of
21 complaints made, investigated, and adjudicated and manner of
22 disposition. In addition, the report must provide data on the
23 department's background check activities conducted under section 4 of
24 this act and the effectiveness of those activities in identifying
25 potential license holders who may not be qualified to practice safely.
26 The report may include recommendations for improving the disciplinary
27 process, including proposed legislation. The department shall develop
28 a uniform report format.

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

35 NEW SECTION. **Sec. 12.** A new section is added to chapter 18.130
36 RCW to read as follows:

1 To implement section 4 of this act, the department may increase
2 application and renewal fees by amounts that exceed the fiscal growth
3 factor under RCW 43.135.055.

4 **Sec. 13.** RCW 70.41.210 and 2005 c 470 s 1 are each amended to read
5 as follows:

6 (1) The chief administrator or executive officer of a hospital
7 shall report to the department when the practice of a health care
8 practitioner as defined in subsection (2) of this section is
9 restricted, suspended, limited, or terminated based upon a conviction,
10 determination, or finding by the hospital that the health care
11 practitioner has committed an action defined as unprofessional conduct
12 under RCW 18.130.180. The chief administrator or executive officer
13 shall also report any voluntary restriction or termination of the
14 practice of a health care practitioner as defined in subsection (2) of
15 this section while the practitioner is under investigation or the
16 subject of a proceeding by the hospital regarding unprofessional
17 conduct, or in return for the hospital not conducting such an
18 investigation or proceeding or not taking action. The department will
19 forward the report to the appropriate disciplining authority.

20 (2) The reporting requirements apply to the following health care
21 practitioners: Pharmacists as defined in chapter 18.64 RCW; advanced
22 registered nurse practitioners as defined in chapter 18.79 RCW;
23 dentists as defined in chapter 18.32 RCW; naturopaths as defined in
24 chapter 18.36A RCW; optometrists as defined in chapter 18.53 RCW;
25 osteopathic physicians and surgeons as defined in chapter 18.57 RCW;
26 osteopathic ((~~physician~~—[~~physicians~~'])) physicians' assistants as
27 defined in chapter 18.57A RCW; physicians as defined in chapter 18.71
28 RCW; physician assistants as defined in chapter 18.71A RCW; podiatric
29 physicians and surgeons as defined in chapter 18.22 RCW; and
30 psychologists as defined in chapter 18.83 RCW.

31 (3) Reports made under subsection (1) of this section shall be made
32 within fifteen days of the date: (a) A conviction, determination, or
33 finding is made by the hospital that the health care practitioner has
34 committed an action defined as unprofessional conduct under RCW
35 18.130.180; or (b) the voluntary restriction or termination of the
36 practice of a health care practitioner, including his or her voluntary

1 resignation, while under investigation or the subject of proceedings
2 regarding unprofessional conduct under RCW 18.130.180 is accepted by
3 the hospital.

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

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

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

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

30 NEW SECTION. **Sec. 14.** A new section is added to chapter 18.130
31 RCW to read as follows:

32 Any license holder performing a gynecological examination or
33 procedure must ensure that a third party is in the room where the
34 examination or procedure is being conducted, unless the patient signs
35 a written waiver of the right while the patient is competent to sign
36 such a waiver.

1 NEW SECTION. **Sec. 15.** (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. 16.** 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. 17.** 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 NEW SECTION. **Sec. 18.** Except for section 4 of this act, which
28 takes effect January 1, 2008, this act is necessary for the immediate
29 preservation of the public peace, health, or safety, or support of the
30 state government and its existing public institutions, and takes effect
31 immediately.

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