
HOUSE BILL 2544

State of Washington

61st Legislature

2010 Regular Session

By Representatives Chase and Campbell

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1 AN ACT Relating to requiring informed consent prior to the
2 administration of any drug when the patient has a known allergy to that
3 drug or that family of drugs; and amending RCW 7.70.050 and 18.130.180.

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

5 **Sec. 1.** RCW 7.70.050 and 1975-'76 2nd ex.s. c 56 s 10 are each
6 amended to read as follows:

7 (1) The following shall be necessary elements of proof that injury
8 resulted from health care in a civil negligence case or arbitration
9 involving the issue of the alleged breach of the duty to secure an
10 informed consent by a patient or his representatives against a health
11 care provider:

12 (a) That the health care provider failed to inform the patient of
13 a material fact or facts relating to the treatment, including, but
14 limited to:

15 (i) That the treatment involves the administration of a drug or a
16 family of drugs to which the patient has a known allergy; and

17 (ii) That there are negative outcomes, about which the provider
18 knows or should know, associated with the interaction of the drug with
19 another drug the patient is known to be taking;

1 (b) That the patient consented to the treatment without being aware
2 of or fully informed of such material fact or facts;

3 (c) That a reasonably prudent patient under similar circumstances
4 would not have consented to the treatment if informed of such material
5 fact or facts;

6 (d) That the treatment in question proximately caused injury to the
7 patient.

8 (2) Under the provisions of this section a fact is defined as or
9 considered to be a material fact, if a reasonably prudent person in the
10 position of the patient or his representative would attach significance
11 to it deciding whether or not to submit to the proposed treatment.

12 (3) Material facts under the provisions of this section which must
13 be established by expert testimony shall be either:

14 (a) The nature and character of the treatment proposed and
15 administered;

16 (b) The anticipated results of the treatment proposed and
17 administered;

18 (c) The recognized possible alternative forms of treatment; or

19 (d) The recognized serious possible risks, complications, and
20 anticipated benefits involved in the treatment administered and in the
21 recognized possible alternative forms of treatment, including
22 nontreatment.

23 (4) If a recognized health care emergency exists and the patient is
24 not legally competent to give an informed consent and/or a person
25 legally authorized to consent on behalf of the patient is not readily
26 available, his consent to required treatment will be implied.

27 **Sec. 2.** RCW 18.130.180 and 2008 c 134 s 25 are each amended to
28 read as follows:

29 The following conduct, acts, or conditions constitute
30 unprofessional conduct for any license holder under the jurisdiction of
31 this chapter:

32 (1) The commission of any act involving moral turpitude,
33 dishonesty, or corruption relating to the practice of the person's
34 profession, whether the act constitutes a crime or not. If the act
35 constitutes a crime, conviction in a criminal proceeding is not a
36 condition precedent to disciplinary action. Upon such a conviction,
37 however, the judgment and sentence is conclusive evidence at the

1 ensuing disciplinary hearing of the guilt of the license holder of the
2 crime described in the indictment or information, and of the person's
3 violation of the statute on which it is based. For the purposes of
4 this section, conviction includes all instances in which a plea of
5 guilty or nolo contendere is the basis for the conviction and all
6 proceedings in which the sentence has been deferred or suspended.
7 Nothing in this section abrogates rights guaranteed under chapter 9.96A
8 RCW;

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

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

12 (4) Incompetence, negligence, or malpractice which results in
13 injury to a patient or which creates an unreasonable risk that a
14 patient may be harmed. The use of a nontraditional treatment by itself
15 shall not constitute unprofessional conduct, provided that it does not
16 result in injury to a patient or create an unreasonable risk that a
17 patient may be harmed;

18 (5) Suspension, revocation, or restriction of the individual's
19 license to practice any health care profession by competent authority
20 in any state, federal, or foreign jurisdiction, a certified copy of the
21 order, stipulation, or agreement being conclusive evidence of the
22 revocation, suspension, or restriction;

23 (6) The possession, use, prescription for use, or distribution of
24 controlled substances or legend drugs in any way other than for
25 legitimate or therapeutic purposes, diversion of controlled substances
26 or legend drugs, the violation of any drug law, or prescribing
27 controlled substances for oneself;

28 (7) Violation of any state or federal statute or administrative
29 rule regulating the profession in question, including any statute or
30 rule defining or establishing standards of patient care or professional
31 conduct or practice;

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

33 (a) Not furnishing any papers, documents, records, or other items;

34 (b) Not furnishing in writing a full and complete explanation
35 covering the matter contained in the complaint filed with the
36 disciplining authority;

37 (c) Not responding to subpoenas issued by the disciplining

1 authority, whether or not the recipient of the subpoena is the accused
2 in the proceeding; or

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

6 (9) Failure to comply with an order issued by the disciplining
7 authority or a stipulation for informal disposition entered into with
8 the disciplining authority;

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

11 (11) Violations of rules established by any health agency;

12 (12) Practice beyond the scope of practice as defined by law or
13 rule;

14 (13) Misrepresentation or fraud in any aspect of the conduct of the
15 business or profession;

16 (14) Failure to adequately supervise auxiliary staff to the extent
17 that the consumer's health or safety is at risk;

18 (15) Engaging in a profession involving contact with the public
19 while suffering from a contagious or infectious disease involving
20 serious risk to public health;

21 (16) Promotion for personal gain of any unnecessary or
22 inefficacious drug, device, treatment, procedure, or service;

23 (17) Conviction of any gross misdemeanor or felony relating to the
24 practice of the person's profession. For the purposes of this
25 subsection, conviction includes all instances in which a plea of guilty
26 or nolo contendere is the basis for conviction and all proceedings in
27 which the sentence has been deferred or suspended. Nothing in this
28 section abrogates rights guaranteed under chapter 9.96A RCW;

29 (18) The procuring, or aiding or abetting in procuring, a criminal
30 abortion;

31 (19) The offering, undertaking, or agreeing to cure or treat
32 disease by a secret method, procedure, treatment, or medicine, or the
33 treating, operating, or prescribing for any health condition by a
34 method, means, or procedure which the licensee refuses to divulge upon
35 demand of the disciplining authority;

36 (20) The willful betrayal of a practitioner-patient privilege as
37 recognized by law;

38 (21) Violation of chapter 19.68 RCW;

1 (22) Interference with an investigation or disciplinary proceeding
2 by willful misrepresentation of facts before the disciplining authority
3 or its authorized representative, or by the use of threats or
4 harassment against any patient or witness to prevent them from
5 providing evidence in a disciplinary proceeding or any other legal
6 action, or by the use of financial inducements to any patient or
7 witness to prevent or attempt to prevent him or her from providing
8 evidence in a disciplinary proceeding;

9 (23) Current misuse of:

10 (a) Alcohol;

11 (b) Controlled substances; or

12 (c) Legend drugs;

13 (24) Abuse of a client or patient or sexual contact with a client
14 or patient;

15 (25) Acceptance of more than a nominal gratuity, hospitality, or
16 subsidy offered by a representative or vendor of medical or health-
17 related products or services intended for patients, in contemplation of
18 a sale or for use in research publishable in professional journals,
19 where a conflict of interest is presented, as defined by rules of the
20 disciplining authority, in consultation with the department, based on
21 recognized professional ethical standards;

22 (26) Failure to obtain written informed consent prior to the
23 administration of any drug when the patient has a known allergy to that
24 drug or that family of drugs or when there are negative outcomes, about
25 which the license holder knows or should know, associated with the
26 interaction of the drug with another drug the patient is known to be
27 taking, regardless of whether the administration of the drug results in
28 injury and regardless of whether the failure to obtain written informed
29 consent constitutes a breach of the duty to secure an informed consent
30 under RCW 7.70.050. This subsection does not apply if: (a) A
31 recognized health care emergency exists; (b) the patient is not legally
32 competent to give an informed consent; and (c) a person legally
33 authorized to consent on behalf of the patient is not readily
34 available.

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