

# SENATE BILL REPORT

## ESHB 1381

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As of March 27, 2013

**Title:** An act relating to administrative adjudicatory proceedings coming before the department of health.

**Brief Description:** Regarding administrative adjudicatory proceedings coming before the department of health.

**Sponsors:** House Committee on Government Accountability & Oversight (originally sponsored by Representatives Jenkins, Hunt, Wylie, Morrell, Cody, Green, Roberts, Clibborn, Ormsby, Reykdal and Ryu).

**Brief History:** Passed House: 3/11/13, 97-0.

**Committee Activity:** Health Care: 3/26/13.

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### SENATE COMMITTEE ON HEALTH CARE

**Staff:** Mich'l Needham (786-7442)

**Background:** The powers, authority, and functions of the Department of Health (DOH) are extremely broad and include the regulation of:

- specified health care providers and entities under the Uniform Disciplinary Act (UDA) (chapter 18.130 RCW);
- the dispensation and distribution of controlled substances (chapter 69.45 RCW);
- specified aspects of the Uniform Controlled Substances Act (chapter 69.50 RCW); and
- local health departments and officers (chapter 70.05 RCW).

DOH is authorized to conduct administrative adjudicatory actions for regulatory violations by those persons and entities falling within the purview of its authority. Such adjudicatory actions are subject to the requirements of the Administrative Procedures Act (APA) and are conducted by presiding officers employed by DOH.

Credentialed health care providers are subject to professional discipline under the UDA. The UDA authorizes DOH and other specified agencies, boards, and commissions to take action against a provider for a variety of reasons, including unprofessional conduct, unlicensed practice, and the mental or physical inability to practice skillfully or safely.

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Under the UDA, responsibilities in the disciplinary process are divided between the Secretary of DOH (Secretary) and many health profession boards and commissions, collectively known as disciplining authorities. A disciplining authority is defined to mean an agency, board, or commission having the authority to take disciplinary action against a holder of, or applicant for, a professional or business license upon a finding of a violation of the UDA or other regulatory provision pertaining to specified health care-related professions. DOH acts as the disciplining authority for many specified health care providers, and various statutorily designated boards and commissions serve as the disciplining authority for the remainder.

The UDA requires a disciplining authority to use either a designated presiding officer or the Office of Administrative Hearings (OAH) for the purpose of conducting adjudicative proceedings. The presiding officer may either be the Secretary or the Secretary's designee. In the context of proceedings under the UDA, presiding officers are the functional equivalent of an administrative law judge (ALJ) and are analogous to the ALJs that conduct adjudicative hearings within OAH. These presiding officers employed by DOH are often referred to as health law judges.

Presiding officers issue initial orders that are subject to review by the disciplining authority, which must then issue the final order. In most cases a disciplinary authority may delegate to the presiding officer the authority to issue the final order. However, final decisions regarding the disposition of a license must be made by the disciplining authority unless such decision-making power is expressly delegated to the presiding officer. In cases pertaining to standards of practice, or where clinical expertise is necessary, certain specified disciplining authorities may not delegate final decision-making power to the presiding officer. Formal adjudicative hearings convened under the authority of the UDA must conform to the requirements of the APA.

OAH is an independent state agency responsible for the review of the actions of other state agencies. The Director of OAH is the Chief Administrative Law Judge, appointed by the Governor and confirmed by the Senate. Hearings before OAH are presided over by an ALJ. The hearings are conducted in accordance with statutory procedures outlined in the APA, and are generally less formal than court proceedings.

**Summary of Bill:** In all administrative adjudicative proceedings before the Secretary or DOH, the Secretary may delegate initial decision-making authority to a presiding officer. The presiding officer must enter an initial order subject to the review of the Secretary or the Secretary's designee.

The Secretary may, by rule, provide that initial orders in specified classes of cases become final without further agency action unless, within a specified time period:

- the Secretary upon the Secretary's own motion determines that the initial order should be reviewed; or
- a party to the proceedings files a petition for administrative review of the final order.

**Appropriation:** None.

**Fiscal Note:** Available.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony:** PRO: This bill is intended to provide a review of initial health law decisions by the Secretary. All the other agency directors have an opportunity to review decisions. DOH reviewed over 300,000 health professionals and the disciplinary actions for those professionals. Having the internal review with the Secretary will help ensure the policy approach is consistent across the agency and across the different administrative law judges. It also provides another level of appeal or review for health professionals that may disagree with the findings, without having to go to the Superior Court. DOH supports providing an opportunity for the Secretary to complete a final review of administrative proceedings. The administrative law proceedings can still be formally appealed but this would provide another level of review and may help avoid some appeals.

**Persons Testifying:** PRO: Representative Jinkins, prime sponsor; Karen Jensen, DOH.