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ENGROSSED SUBSTITUTE HOUSE BILL 2451

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State of Washington

63rd Legislature

2014 Regular Session

By House Health Care & Wellness (originally sponsored by Representatives Liiias, Walsh, Moeller, Cody, Walkinshaw, Jinkins, Lytton, Goodman, Stanford, Wylie, Riccelli, Pettigrew, Roberts, Orwall, Ryu, Tarleton, Reykdal, Habib, Bergquist, Gregerson, Farrell, Pollet, and Ormsby)

READ FIRST TIME 02/05/14.

1 AN ACT Relating to restricting the practice of sexual orientation  
2 change efforts; amending RCW 18.130.020 and 18.130.180; and creating  
3 new sections.

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

5 NEW SECTION. **Sec. 1.** (1) The legislature intends to regulate the  
6 professional conduct of licensed health care providers with respect to  
7 performing sexual orientation change efforts on patients under age  
8 eighteen. Licensed health care providers may discuss sexual  
9 orientation change efforts with patients under the age of eighteen,  
10 provided that such discussions do not constitute the performance of  
11 sexual orientation change efforts.

12 (2) The legislature finds and declares that Washington has a  
13 compelling interest in protecting the physical and psychological well-  
14 being of minors and in protecting its minors against exposure to  
15 serious harms caused by sexual orientation change efforts, while  
16 maintaining a patient-driven process.

17 NEW SECTION. **Sec. 2.** This act may not be construed to apply to:

1 (1) Speech that does not constitute performing sexual orientation  
2 change efforts by licensed health care providers on patients under age  
3 eighteen;

4 (2) Religious practices or counseling under the auspices of a  
5 religious denomination, church, or organization that do not constitute  
6 performing sexual orientation change efforts by licensed health care  
7 providers on patients under age eighteen; and

8 (3) Nonlicensed counselors acting under the auspices of a religious  
9 denomination or church.

10 **Sec. 3.** RCW 18.130.020 and 2008 c 134 s 2 are each amended to read  
11 as follows:

12 The definitions in this section apply throughout this chapter  
13 unless the context clearly requires otherwise.

14 (1) "Board" means any of those boards specified in RCW 18.130.040.

15 (2) "Clinical expertise" means the proficiency or judgment that a  
16 license holder in a particular profession acquires through clinical  
17 experience or clinical practice and that is not possessed by a lay  
18 person.

19 (3) "Commission" means any of the commissions specified in RCW  
20 18.130.040.

21 (4) "Department" means the department of health.

22 (5) "Disciplinary action" means sanctions identified in RCW  
23 18.130.160.

24 (6) "Disciplining authority" means the agency, board, or commission  
25 having the authority to take disciplinary action against a holder of,  
26 or applicant for, a professional or business license upon a finding of  
27 a violation of this chapter or a chapter specified under RCW  
28 18.130.040.

29 (7) "Health agency" means city and county health departments and  
30 the department of health.

31 (8) "License," "licensing," and "licensure" shall be deemed  
32 equivalent to the terms "license," "licensing," "licensure,"  
33 "certificate," "certification," and "registration" as those terms are  
34 defined in RCW 18.120.020.

35 (9) "Practice review" means an investigative audit of records  
36 related to the complaint, without prior identification of specific  
37 patient or consumer names, or an assessment of the conditions,

1 circumstances, and methods of the professional's practice related to  
2 the complaint, to determine whether unprofessional conduct may have  
3 been committed.

4 (10) "Secretary" means the secretary of health or the secretary's  
5 designee.

6 (11)(a) "Sexual orientation change efforts" means a regime that  
7 seeks to change an individual's sexual orientation. The term includes  
8 efforts to change behaviors or gender expressions, or to eliminate or  
9 reduce sexual or romantic attractions or feelings toward individuals of  
10 the same sex.

11 (b) The term does not include psychotherapies that (i) provide  
12 acceptance, support, and understanding of clients or the facilitation  
13 of clients' coping, social support, and identity exploration and  
14 development, including sexual orientation-neutral interventions to  
15 prevent or address unlawful conduct or unsafe sexual practices; and  
16 (ii) do not seek to change sexual orientation.

17 (12) "Standards of practice" means the care, skill, and learning  
18 associated with the practice of a profession.

19 ((+12+)) (13) "Unlicensed practice" means:

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

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

28 **Sec. 4.** RCW 18.130.180 and 2010 c 9 s 5 are each amended to read  
29 as follows:

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

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

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

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

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

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

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

24 (6) Except when authorized by RCW 18.130.345, the possession, use,  
25 prescription for use, or distribution of controlled substances or  
26 legend drugs in any way other than for legitimate or therapeutic  
27 purposes, diversion of controlled substances or legend drugs, the  
28 violation of any drug law, or prescribing controlled substances for  
29 oneself;

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

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

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

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

- 1 (c) Not responding to subpoenas issued by the disciplining  
2 authority, whether or not the recipient of the subpoena is the accused  
3 in the proceeding; or
- 4 (d) Not providing reasonable and timely access for authorized  
5 representatives of the disciplining authority seeking to perform  
6 practice reviews at facilities utilized by the license holder;
- 7 (9) Failure to comply with an order issued by the disciplining  
8 authority or a stipulation for informal disposition entered into with  
9 the disciplining authority;
- 10 (10) Aiding or abetting an unlicensed person to practice when a  
11 license is required;
- 12 (11) Violations of rules established by any health agency;
- 13 (12) Practice beyond the scope of practice as defined by law or  
14 rule;
- 15 (13) Misrepresentation or fraud in any aspect of the conduct of the  
16 business or profession;
- 17 (14) Failure to adequately supervise auxiliary staff to the extent  
18 that the consumer's health or safety is at risk;
- 19 (15) Engaging in a profession involving contact with the public  
20 while suffering from a contagious or infectious disease involving  
21 serious risk to public health;
- 22 (16) Promotion for personal gain of any unnecessary or  
23 inefficacious drug, device, treatment, procedure, or service;
- 24 (17) Conviction of any gross misdemeanor or felony relating to the  
25 practice of the person's profession. For the purposes of this  
26 subsection, conviction includes all instances in which a plea of guilty  
27 or nolo contendere is the basis for conviction and all proceedings in  
28 which the sentence has been deferred or suspended. Nothing in this  
29 section abrogates rights guaranteed under chapter 9.96A RCW;
- 30 (18) The procuring, or aiding or abetting in procuring, a criminal  
31 abortion;
- 32 (19) The offering, undertaking, or agreeing to cure or treat  
33 disease by a secret method, procedure, treatment, or medicine, or the  
34 treating, operating, or prescribing for any health condition by a  
35 method, means, or procedure which the licensee refuses to divulge upon  
36 demand of the disciplining authority;
- 37 (20) The willful betrayal of a practitioner-patient privilege as  
38 recognized by law;

1 (21) Violation of chapter 19.68 RCW;  
2 (22) Interference with an investigation or disciplinary proceeding  
3 by willful misrepresentation of facts before the disciplining authority  
4 or its authorized representative, or by the use of threats or  
5 harassment against any patient or witness to prevent them from  
6 providing evidence in a disciplinary proceeding or any other legal  
7 action, or by the use of financial inducements to any patient or  
8 witness to prevent or attempt to prevent him or her from providing  
9 evidence in a disciplinary proceeding;  
10 (23) Current misuse of:  
11 (a) Alcohol;  
12 (b) Controlled substances; or  
13 (c) Legend drugs;  
14 (24) Abuse of a client or patient or sexual contact with a client  
15 or patient;  
16 (25) Acceptance of more than a nominal gratuity, hospitality, or  
17 subsidy offered by a representative or vendor of medical or health-  
18 related products or services intended for patients, in contemplation of  
19 a sale or for use in research publishable in professional journals,  
20 where a conflict of interest is presented, as defined by rules of the  
21 disciplining authority, in consultation with the department, based on  
22 recognized professional ethical standards;  
23 (26) Performing sexual orientation change efforts on a patient  
24 under age eighteen.

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