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**SUBSTITUTE HOUSE BILL 1135**

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**State of Washington 64th Legislature 2015 Regular Session**

**By** House Health Care & Wellness (originally sponsored by Representatives Cody, Harris, Jinkins, and Gregerson; by request of Department of Health)

AN ACT Relating to education-based practice remediation for licensed health and health-related professions; and adding a new section to chapter 18.130 RCW.

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

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

(1) In addition to the authority to take formal disciplinary action under RCW 18.130.090 or 18.130.170, and informal discipline under RCW 18.130.172, the disciplining authority may, after investigation, offer a license holder a remediation plan to resolve eligible complaints of unprofessional conduct under this section.

(2)(a) A remediation plan must not be used in any case in which there is evidence of harm to a patient or client as a direct result of the license holder's practice-related deficiencies.

(b) A remediation plan may be offered at the discretion of the disciplining authority to resolve eligible complaints. Nothing in this subsection:

(i) Requires the use of a remediation plan before taking informal or formal disciplinary action; or

(ii) Grants a license holder the right to:

(A) A remediation plan;

(B) A hearing to modify a remediation plan or challenge the disciplining authority's decision regarding successful completion of a remediation plan; or

(C) An administrative review or appeal.

(3) A disciplining authority may not offer a remediation plan to resolve a complaint if:

(a) The investigation reveals evidence of:

(i) Abuse, neglect, or financial exploitation of a patient or client;

(ii) Sexual misconduct;

(iii) Diversion of a controlled substance or legend drug for the license holder's personal use or for distribution to another person;

(iv) Use, prescription for use, or distribution of a controlled substance or legend drug in any way other than for legitimate therapeutic purposes, including prescribing a controlled substance for oneself;

(v) Substance abuse or misuse;

(vi) Conviction of any felony;

(vii) Gross incompetence; or

(viii) Any other category of allegation identified by the disciplining authority in rule;

(b) The license holder is currently subject to informal or formal disciplinary action;

(c) The disciplining authority determines the appropriate resolution requires restriction, suspension, or revocation of the license holder's credential;

(d) The license holder has been engaged in a remediation plan with the disciplining authority during the five years immediately before receipt of the complaint. A disciplining authority may adopt rules establishing less frequent eligibility; or

(e) The license holder has ever been engaged in a remediation plan with the disciplining authority based on allegations of the same general nature as the allegations in the current investigative file.

(4) When entering into a remediation plan, the disciplining authority and a license holder must acknowledge and agree:

(a) The license holder does not admit to any acts of unprofessional conduct and the disciplining authority makes no finding of unprofessional conduct;

(b) The remediation plan is not disciplinary action, adverse action, or negative action, and is not reportable under RCW 18.130.110 to national databases, professional associations or organizations, the media, or counterpart licensing boards in other states;

(c) The remediation plan must be posted on the department's web site during the term of the plan. The department shall remove the posting from the web site as soon as practicable after the disciplining authority determines that the license holder has successfully completed the remediation plan;

(d) The remediation plan is not admissible in any civil, criminal, or administrative action, except it is admissible in any disciplinary proceeding by any disciplining authority;

(e) The remediation plan and all related documents are subject to public disclosure under chapter 42.56 RCW;

(f) The complainant will be notified that the license holder and disciplining authority have agreed to resolve the complaint through a remediation plan;

(g) The license holder must sign all necessary releases to allow the disciplining authority to receive information relevant to compliance with the remediation plan;

(h) The disciplining authority may assess a fee against the license holder in an amount necessary to recover the costs of administering the remediation plan;

(i) Successful completion of the remediation plan resolves the allegations of unprofessional conduct contained in the investigative file and no other sanction may be imposed based solely on that conduct;

(j) The disciplining authority may investigate and take disciplinary action based on any allegation received or evidence discovered during the term of the remediation plan; and

(k) In the event the license holder fails to comply with the remediation plan, the disciplining authority may take disciplinary action against the license holder and the license holder may not contest or object to the admissibility of evidence contained in the investigative file.

(5) A disciplining authority may adopt rules necessary to implement this section.

(6) For the purposes of this section:

(a) "Gross incompetence" means the license holder does not have the ability to practice with reasonable skill and safety as determined by the disciplining authority.

(b) "License holder" means a person registered, certified, or licensed in a profession listed in RCW 18.130.040(2).

(c) "Remediation plan" means an agreement between the disciplining authority and the license holder that includes one or more educational or corrective activities intended to resolve practice-related deficiencies.

(d) "Sexual misconduct" means:

(i) Sexual contact with a current client or patient as defined by the disciplining authority in rule;

(ii) Sexual contact with a former client or patient within a period of time prohibited by the disciplining authority in rule;

(iii) Sexual contact with any person involving force, intimidation, or lack of consent; or

(iv) Conviction of a sex offense as defined in RCW 9.94A.030.

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