

SSB 5870 - H COMM AMD

By Committee on Health Care & Wellness

ADOPTED 4/9/2015

1 Strike everything after the enacting clause and insert the  
2 following:

3 "NEW SECTION. **Sec. 1.** The legislature intends to regulate the  
4 professional conduct of licensed health care providers with respect  
5 to performing aversive mental health therapies, including conversion  
6 therapy, on patients under the age of eighteen. This includes, but is  
7 not limited to, aversive efforts that seek to change an individual's  
8 sexual orientation, that seek to stop an individual from using  
9 tobacco products, or that seek to stop an individual from using  
10 alcohol, prescription drugs, or other controlled substances.

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

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

15 (1) "Aversive mental health therapy" means aversion therapy and  
16 conversion therapy.

17 (2) "Aversion therapy" means a practice, treatment, or therapy  
18 involving electrical shock, extreme temperatures, prolonged  
19 isolation, chemically induced nausea or vomiting, assault as defined  
20 in chapter 9A.36 RCW, or other procedures intending to cause pain,  
21 discomfort, or unpleasant sensations to the client or patient.  
22 "Aversion therapy" does not include practices, treatments, or  
23 therapies that are within the standards of practice for license  
24 holders under this chapter as provided in department rules.

25 (3) "Board" means any of those boards specified in RCW  
26 18.130.040.

27 ((+2)) (4) "Clinical expertise" means the proficiency or  
28 judgment that a license holder in a particular profession acquires  
29 through clinical experience or clinical practice and that is not  
30 possessed by a lay person.

31 ((+3)) (5) "Commission" means any of the commissions specified  
32 in RCW 18.130.040.

1       ~~((4))~~ (6) "Conversion therapy" means any practices or  
2 treatments that seek to change an individual's sexual orientation or  
3 gender identity, including efforts to change behaviors or gender  
4 expressions or to eliminate or reduce sexual or romantic attractions  
5 or feelings toward individuals of the same gender. Conversion therapy  
6 shall not include counseling that provides assistance to a person  
7 undergoing gender transition, or counseling that provides acceptance,  
8 support, and understanding of a person or facilitates a person's  
9 coping, social support, and identity exploration and development,  
10 including sexual orientation-neutral interventions to prevent or  
11 address unlawful conduct or unsafe sexual practices, as long as such  
12 counseling does not seek to change sexual orientation or gender  
13 identity.

14       (7) "Department" means the department of health.

15       ~~((5))~~ (8) "Disciplinary action" means sanctions identified in  
16 RCW 18.130.160.

17       ~~((6))~~ (9) "Disciplining authority" means the agency, board, or  
18 commission having the authority to take disciplinary action against a  
19 holder of, or applicant for, a professional or business license upon  
20 a finding of a violation of this chapter or a chapter specified under  
21 RCW 18.130.040.

22       ~~((7))~~ (10) "Health agency" means city and county health  
23 departments and the department of health.

24       ~~((8))~~ (11) "License," "licensing," and "licensure" shall be  
25 deemed equivalent to the terms "license," "licensing," "licensure,"  
26 "certificate," "certification," and "registration" as those terms are  
27 defined in RCW 18.120.020.

28       ~~((9))~~ (12) "Practice review" means an investigative audit of  
29 records related to the complaint, without prior identification of  
30 specific patient or consumer names, or an assessment of the  
31 conditions, circumstances, and methods of the professional's practice  
32 related to the complaint, to determine whether unprofessional conduct  
33 may have been committed.

34       ~~((10))~~ (13)(a) "Prohibited aversive mental health therapy"  
35 means any aversive mental health therapy performed on a patient under  
36 the age of eighteen.

37       (14) "Secretary" means the secretary of health or the secretary's  
38 designee.

39       ~~((11))~~ (15) "Standards of practice" means the care, skill, and  
40 learning associated with the practice of a profession.

1           (~~(12)~~) (16) "Unlicensed practice" means:

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

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

10           **Sec. 3.** RCW 18.130.180 and 2010 c 9 s 5 are each amended to read  
11 as follows:

12           The following conduct, acts, or conditions constitute  
13 unprofessional conduct for any license holder under the jurisdiction  
14 of this chapter:

15           (1) The commission of any act involving moral turpitude,  
16 dishonesty, or corruption relating to the practice of the person's  
17 profession, whether the act constitutes a crime or not. If the act  
18 constitutes a crime, conviction in a criminal proceeding is not a  
19 condition precedent to disciplinary action. Upon such a conviction,  
20 however, the judgment and sentence is conclusive evidence at the  
21 ensuing disciplinary hearing of the guilt of the license holder of  
22 the crime described in the indictment or information, and of the  
23 person's violation of the statute on which it is based. For the  
24 purposes of this section, conviction includes all instances in which  
25 a plea of guilty or nolo contendere is the basis for the conviction  
26 and all proceedings in which the sentence has been deferred or  
27 suspended. Nothing in this section abrogates rights guaranteed under  
28 chapter 9.96A RCW;

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

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

32           (4) Incompetence, negligence, or malpractice which results in  
33 injury to a patient or which creates an unreasonable risk that a  
34 patient may be harmed. The use of a nontraditional treatment by  
35 itself shall not constitute unprofessional conduct, provided that it  
36 does not result in injury to a patient or create an unreasonable risk  
37 that a patient may be harmed;

38           (5) Suspension, revocation, or restriction of the individual's  
39 license to practice any health care profession by competent authority

1 in any state, federal, or foreign jurisdiction, a certified copy of  
2 the order, stipulation, or agreement being conclusive evidence of the  
3 revocation, suspension, or restriction;

4 (6) Except when authorized by RCW 18.130.345, the possession,  
5 use, prescription for use, or distribution of controlled substances  
6 or legend drugs in any way other than for legitimate or therapeutic  
7 purposes, diversion of controlled substances or legend drugs, the  
8 violation of any drug law, or prescribing controlled substances for  
9 oneself;

10 (7) Violation of any state or federal statute or administrative  
11 rule regulating the profession in question, including any statute or  
12 rule defining or establishing standards of patient care or  
13 professional conduct or practice;

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

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

17 (b) Not furnishing in writing a full and complete explanation  
18 covering the matter contained in the complaint filed with the  
19 disciplining authority;

20 (c) Not responding to subpoenas issued by the disciplining  
21 authority, whether or not the recipient of the subpoena is the  
22 accused in the proceeding; or

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

26 (9) Failure to comply with an order issued by the disciplining  
27 authority or a stipulation for informal disposition entered into with  
28 the disciplining authority;

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

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

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

34 (13) Misrepresentation or fraud in any aspect of the conduct of  
35 the business or profession;

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

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

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

3 (17) Conviction of any gross misdemeanor or felony relating to  
4 the practice of the person's profession. For the purposes of this  
5 subsection, conviction includes all instances in which a plea of  
6 guilty or nolo contendere is the basis for 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 9.96A RCW;

10 (18) The procuring, or aiding or abetting in procuring, a  
11 criminal abortion;

12 (19) The offering, undertaking, or agreeing to cure or treat  
13 disease by a secret method, procedure, treatment, or medicine, or the  
14 treating, operating, or prescribing for any health condition by a  
15 method, means, or procedure which the licensee refuses to divulge  
16 upon demand of the disciplining authority;

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

19 (21) Violation of chapter 19.68 RCW;

20 (22) Interference with an investigation or disciplinary  
21 proceeding by willful misrepresentation of facts before the  
22 disciplining authority or its authorized representative, or by the  
23 use of threats or harassment against any patient or witness to  
24 prevent them from providing evidence in a disciplinary proceeding or  
25 any other legal action, or by the use of financial inducements to any  
26 patient or witness to prevent or attempt to prevent him or her from  
27 providing evidence in a disciplinary proceeding;

28 (23) Current misuse of:

29 (a) Alcohol;

30 (b) Controlled substances; or

31 (c) Legend drugs;

32 (24) Abuse of a client or patient or sexual contact with a client  
33 or patient;

34 (25) Acceptance of more than a nominal gratuity, hospitality, or  
35 subsidy offered by a representative or vendor of medical or health-  
36 related products or services intended for patients, in contemplation  
37 of a sale or for use in research publishable in professional  
38 journals, where a conflict of interest is presented, as defined by  
39 rules of the disciplining authority, in consultation with the  
40 department, based on recognized professional ethical standards;

1        (26) Performing any prohibited aversive mental health therapy on  
2 a patient."

3        Correct the title.

EFFECT: Strikes the underlying provisions of the bill and makes the following changes:

Establishes as unprofessional conduct the performance of prohibited aversive mental health therapy, which is defined to mean performing aversive mental health therapy on a patient under the age of 18. Defines "aversive mental health therapy" to include both conversion therapy and aversion therapy.

Defines "aversion therapy" to mean a practice, treatment, or therapy involving electrical shock, extreme temperatures, prolonged isolation, chemically induced nausea or vomiting, criminal assault, or other procedures intending to cause pain, discomfort, or unpleasant sensations to the client or patient, excluding practices, treatments, or therapies that are within the standards of practice as provided in Department of Health rules.

Defines "conversion therapy" to mean any practices or treatments that seek to change an individual's sexual orientation or gender identity, including efforts to change behaviors or gender expressions or to eliminate or reduce sexual or romantic attractions or feelings toward individuals of the same gender. Excludes from the definition of "conversion therapy" counseling that provides assistance to a person undergoing gender transition, and counseling that provides acceptance, support, and understanding of a person or facilitates a person's coping, social support, and identity exploration and development, including sexual orientation-neutral interventions to prevent or address unlawful conduct or unsafe sexual practices, as long as the counseling does not seek to change sexual orientation or gender identity.

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