

HOUSE BILL REPORT

HB 1135

As Reported by House Committee On: Health Care & Wellness

Title: An act relating to education-based practice remediation for licensed health and health-related professions.

Brief Description: Concerning remediation plans for licensed health and health-related professions to resolve eligible complaints of unprofessional conduct.

Sponsors: Representatives Cody, Harris, Jinkins and Gregerson; by request of Department of Health.

Brief History:

Committee Activity:

Health Care & Wellness: 2/10/15, 2/13/15 [DPS].

Brief Summary of Substitute Bill

- Allows a credentialed health professional and disciplining authority to agree to a remediation plan to resolve allegations of unprofessional conduct.
- Provides for situations where a remediation plan is inappropriate.

HOUSE COMMITTEE ON HEALTH CARE & WELLNESS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 15 members: Representatives Cody, Chair; Riccelli, Vice Chair; Schmick, Ranking Minority Member; Harris, Assistant Ranking Minority Member; Caldier, Clibborn, DeBolt, Jinkins, Johnson, Moeller, Robinson, Rodne, Short, Tharinger and Van De Wege.

Staff: Daniel Rusk (786-7290) and Alexa Silver (786-7190).

Background:

The Uniform Disciplinary Act (UDA) governs credentialed health professionals (license holders). Depending on the profession, the disciplinary authority may be the Secretary of Health, or a board or commission. Under the UDA, a disciplining authority may take action

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against a license holder for a variety of reasons, including misrepresentation or fraud, unlicensed practice, and the mental or physical inability to practice skillfully or safely.

A disciplining authority may initiate a disciplinary action after receiving a complaint or if the disciplining authority has reason to believe that the license holder engaged in unprofessional conduct. The disciplining authority will conduct an investigation into the suspected unprofessional conduct. Following the investigation, if the disciplining authority has reason to believe that misconduct occurred, the disciplining authority may serve a statement of the charges on the license holder or follow an informal discipline process.

If the disciplining authority serves a statement of the charges, the license holder is entitled to a hearing. If the disciplining authority finds that unprofessional conduct occurred, it issues sanctions. Sanctions available include revocation or suspension of the license, payment of a fine, mandatory completion of a remedial education program, and probation. The issuance of sanctions must be reported to: the national database, professional organizations and associations, other states' licensing authority, and the public.

In lieu of discipline, if the disciplining authority finds that the misconduct was the result of substance abuse, then the disciplining authority may refer the license holder to a voluntary substance abuse monitoring program.

Summary of Substitute Bill:

In addition to formal or informal disciplinary action, the disciplining authority and license holder may enter into a remediation plan to resolve the alleged misconduct. A remediation plan is an agreement that includes educational or corrective activities intended to resolve practice-related deficiencies. The disciplining authority has the discretion to choose whether to use a remediation plan, but a remediation plan may not be used if there is evidence of harm to a patient as a direct result of the license holder's practice-related deficiencies.

A remediation plan requires the disciplining authority and the license holder to agree to certain stipulations. The license holder: must sign any necessary releases; may be responsible for fees in the amount necessary to recover the costs for administering the remediation plan; is released of all allegations of unprofessional conduct if he or she completes the remediation plan; and may be subject to disciplinary action if he or she fails to comply with the remediation plan. By participating in a remediation plan, neither the license holder nor the disciplining authority admit to any occurrence of unprofessional conduct. Agreement to participate in a remediation plan does not prevent the disciplining authority from taking disciplinary action based on evidence discovered during the term of the remediation plan.

The remediation plan is not reportable to the national database, professional associations, and other states' licensing boards, but is subject to public disclosure. Additionally, the Department of Health must post the remediation plan on its web site during the plan's term. The remediation plan is not admissible in any civil, criminal, or administrative action. If a remediation plan is created, the complainant will be notified.

There are specific situations when a license holder and the disciplining authority may not enter into a remediation plan. The parties may not agree to a remediation plan if an investigation reveals:

- abuse, neglect, or financial exploitation of a patient;
- sexual misconduct;
- misuse of a controlled substance or legend drug;
- substance abuse;
- conviction of a felony;
- gross incompetence; or
- any allegation identified by the disciplining authority in rule.

Additionally, a remediation plan may not be used when:

- the license holder is already subject to a formal or an informal disciplinary action;
- restriction, suspension, or revocation of the license holder's license is more appropriate, as determined by the disciplining authority;
- the license holder has previously engaged in a remediation plan for unprofessional conduct of the same general nature as the currently alleged misconduct; or
- the license holder has been engaged in a remediation plan during the previous five years. The disciplining authority may establish less frequent eligibility.

The disciplining authority may adopt rules necessary to implement these requirements.

Substitute Bill Compared to Original Bill:

The substitute bill requires the Department of Health to post the remediation plan on its website during the term of the plan. Additionally, it prohibits the disciplining authority from offering a remediation plan when the license holder has already engaged in a remediation plan for a similar misconduct.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) The bill offers an additional tool for disciplining authorities to address minor unprofessional conduct. This will benefit both health professionals and patients because it will remedy issues before they develop into more serious problems. Additionally, the current disciplinary scheme may lead to unintended consequences. Under the current disciplinary scheme, the disciplining authority may either take formal or informal disciplinary action, or close the case. Because of the potential professional consequences

associated with disciplinary action, especially for minor issues, license holders may hire lawyers to fight these actions. This drives up costs and wastes time.

The bill has safeguards to prevent disciplining authorities from using remediation plans when there are allegations of serious misconduct. Therefore, remediation plans will only be used in situations involving minor professional deficiencies. Examples include substandard: record keeping, x-rays, or communication with patient.

(In support with amendment(s)) The process should be more transparent. This could occur by posting the remediation plan on the Department of Health's website. This would prevent disciplining boards from hiding more serious unprofessional conduct in remediation plans.

(Opposed) None.

Persons Testifying: (In support) Kristi Weeks, Department of Health; Lucy Homans, Washington State Psychological Association; and Tierney Edwards, Washington State Medical Association.

(In support with amendment(s)) Rex Johnson, Consumers Union; and Karie Fugate, Washington Advocates for Patient Safety.

Persons Signed In To Testify But Not Testifying: None.