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HOUSE BILL 1972

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State of Washington

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2015 Regular Session

By Representatives Jenkins, Walsh, Walkinshaw, DeBolt, McBride, Harris, Moeller, Kilduff, Goodman, Stanford, S. Hunt, Fitzgibbon, Magendanz, Clibborn, Ormsby, Moscoso, Bergquist, Reykdal, Tarleton, Riccelli, and Pollet

Read first time 02/04/15. Referred to Committee on Health Care & Wellness.

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  
6 the professional conduct of licensed health care providers with  
7 respect to performing sexual orientation change efforts on patients  
8 under age 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  
14 well-being of minors and in protecting its minors against exposure  
15 to 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:

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

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

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

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

9 The definitions in this section apply throughout this chapter  
10 unless the context clearly requires otherwise.

11 (1) "Board" means any of those boards specified in RCW  
12 18.130.040.

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

17 (3) "Commission" means any of the commissions specified in RCW  
18 18.130.040.

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

20 (5) "Disciplinary action" means sanctions identified in RCW  
21 18.130.160.

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

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

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

33 (9) "Practice review" means an investigative audit of records  
34 related to the complaint, without prior identification of specific  
35 patient or consumer names, or an assessment of the conditions,  
36 circumstances, and methods of the professional's practice related to  
37 the complaint, to determine whether unprofessional conduct may have  
38 been committed.

1 (10) "Secretary" means the secretary of health or the secretary's  
2 designee.

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

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

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

16 (~~(12)~~) (13) "Unlicensed practice" means:

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

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

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

27 The following conduct, acts, or conditions constitute  
28 unprofessional conduct for any license holder under the jurisdiction  
29 of this chapter:

30 (1) The commission of any act involving moral turpitude,  
31 dishonesty, or corruption relating to the practice of the person's  
32 profession, whether the act constitutes a crime or not. If the act  
33 constitutes a crime, conviction in a criminal proceeding is not a  
34 condition precedent to disciplinary action. Upon such a conviction,  
35 however, the judgment and sentence is conclusive evidence at the  
36 ensuing disciplinary hearing of the guilt of the license holder of  
37 the crime described in the indictment or information, and of the  
38 person's violation of the statute on which it is based. For the  
39 purposes of this section, conviction includes all instances in which

1 a plea of guilty or nolo contendere is the basis for the conviction  
2 and all proceedings in which the sentence has been deferred or  
3 suspended. Nothing in this section abrogates rights guaranteed under  
4 chapter 9.96A RCW;

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

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

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

14 (5) Suspension, revocation, or restriction of the individual's  
15 license to practice any health care profession by competent authority  
16 in any state, federal, or foreign jurisdiction, a certified copy of  
17 the order, stipulation, or agreement being conclusive evidence of the  
18 revocation, suspension, or restriction;

19 (6) Except when authorized by RCW 18.130.345, the possession,  
20 use, prescription for use, or distribution of controlled substances  
21 or legend drugs in any way other than for legitimate or therapeutic  
22 purposes, diversion of controlled substances or legend drugs, the  
23 violation of any drug law, or prescribing controlled substances for  
24 oneself;

25 (7) Violation of any state or federal statute or administrative  
26 rule regulating the profession in question, including any statute or  
27 rule defining or establishing standards of patient care or  
28 professional conduct or practice;

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

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

32 (b) Not furnishing in writing a full and complete explanation  
33 covering the matter contained in the complaint filed with the  
34 disciplining authority;

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

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

1 (9) Failure to comply with an order issued by the disciplining  
2 authority or a stipulation for informal disposition entered into with  
3 the disciplining authority;

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

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

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

9 (13) Misrepresentation or fraud in any aspect of the conduct of  
10 the business or profession;

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

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

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

18 (17) Conviction of any gross misdemeanor or felony relating to  
19 the practice of the person's profession. For the purposes of this  
20 subsection, conviction includes all instances in which a plea of  
21 guilty or nolo contendere is the basis for conviction and all  
22 proceedings in which the sentence has been deferred or suspended.  
23 Nothing in this section abrogates rights guaranteed under chapter  
24 9.96A RCW;

25 (18) The procuring, or aiding or abetting in procuring, a  
26 criminal abortion;

27 (19) The offering, undertaking, or agreeing to cure or treat  
28 disease by a secret method, procedure, treatment, or medicine, or the  
29 treating, operating, or prescribing for any health condition by a  
30 method, means, or procedure which the licensee refuses to divulge  
31 upon demand of the disciplining authority;

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

34 (21) Violation of chapter 19.68 RCW;

35 (22) Interference with an investigation or disciplinary  
36 proceeding by willful misrepresentation of facts before the  
37 disciplining authority or its authorized representative, or by the  
38 use of threats or harassment against any patient or witness to  
39 prevent them from providing evidence in a disciplinary proceeding or  
40 any other legal action, or by the use of financial inducements to any

1 patient or witness to prevent or attempt to prevent him or her from  
2 providing evidence in a disciplinary proceeding;

3 (23) Current misuse of:

4 (a) Alcohol;

5 (b) Controlled substances; or

6 (c) Legend drugs;

7 (24) Abuse of a client or patient or sexual contact with a client  
8 or patient;

9 (25) Acceptance of more than a nominal gratuity, hospitality, or  
10 subsidy offered by a representative or vendor of medical or health-  
11 related products or services intended for patients, in contemplation  
12 of a sale or for use in research publishable in professional  
13 journals, where a conflict of interest is presented, as defined by  
14 rules of the disciplining authority, in consultation with the  
15 department, based on recognized professional ethical standards;

16 (26) Performing sexual orientation change efforts on a patient  
17 under age eighteen.

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