

HOUSE BILL REPORT

HB 1198

As Reported by House Committee On: Health Care & Wellness

Title: An act relating to requiring health care providers sanctioned for sexual misconduct to notify patients.

Brief Description: Requiring health care providers sanctioned for sexual misconduct to notify patients.

Sponsors: Representatives Caldier, Cody, Harris, Orwall, Slatter, Macri, Wylie, Eslick, Doglio, Griffey and Robinson.

Brief History:

Committee Activity:

Health Care & Wellness: 2/5/19, 2/15/19 [DPS].

Brief Summary of Substitute Bill

- Requires a health care provider to notify a patient if the provider has been sanctioned by a disciplining authority for acts of unprofessional conduct involving sexual misconduct and is subject to an order or stipulation issued by a disciplining authority.

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; Macri, Vice Chair; Schmick, Ranking Minority Member; Caldier, Assistant Ranking Minority Member; Chambers, Davis, DeBolt, Harris, Jinkins, Maycumber, Riccelli, Robinson, Stonier, Thai and Tharinger.

Staff: Kim Weidenaar (786-7120).

Background:

Uniform Disciplinary Act.

The Uniform Disciplinary Act (UDA) governs credentialed health professionals (licensees) credentialed by the Department of Health or one of the health profession's boards or

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commissions. Depending on the profession, the disciplining authority may be the Secretary of Health (Secretary), or a board or commission. Under the UDA, a disciplining authority may take action 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 licensee engaged in unprofessional conduct.

Once a disciplining authority receives a complaint, it makes a threshold determination as to whether the conduct in the complaint constitutes a violation of the law and whether the disciplining authority has the legal authority to take action. If a complaint does not meet this threshold, it is closed. If it does, the disciplining authority conducts an investigation.

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 licensee or follow an informal discipline process. If the disciplining authority serves a statement of the charges, the licensee is entitled to a hearing. If the disciplining authority finds that unprofessional conduct occurred, it issues sanctions. Available sanctions 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.

If the alleged unprofessional conduct involves only sexual misconduct, the Secretary serves as the sole disciplining authority. A board or commission that receives such a complaint must forward the matter to the Secretary.

A disciplining authority is defined as the agency, board, or commission having the authority to take disciplinary action against a holder of, or applicant for, a professional or business license upon a finding of a violation of the UDA.

Under the UDA, the term license is equivalent to certification and registration.

Surrogate Decision-Maker.

In Washington a person has the right to make his or her own health care decisions. If a patient is determined to be incapacitated or incompetent to make health care decisions on their own behalf, a surrogate party may speak for him or her, unless the patient indicates otherwise. The following is the list of persons, in order of priority, who may consent to health care decisions on behalf of a patient who is incapacitated or incompetent:

- an appointed guardian;
- a person with durable power of attorney to make health care decisions;
- a spouse or state registered domestic partner;
- adult children;
- parents; and
- adult siblings.

Summary of Substitute Bill:

A license holder subject to the Uniform Disciplinary Act that has been sanctioned by a disciplining authority for an act of unprofessional conduct involving sexual misconduct, must provide a disclosure to any patient scheduled for an appointment with the license holder during the period of time that the license holder is subject to the order or stipulation. The disclosure is only required to be provided to a patient at or prior to the patient's first visit with the license holder following entry of the order or stipulation. The disclosure requirements only apply to license holders who was sanctioned on or after the effective date of the requirements.

The disclosure must include:

- a copy of the public order or stipulation;
- a description of all sanctions placed on the license holder by the disciplining authority;
- the duration of all sanctions;
- the disciplining authority's telephone number; and
- an explanation of how the patient can find more information about the license holder on the disciplining authority's online license information website.

The license holder must provide the patient or the patient's surrogate decision-maker with the disclosure, which must be signed by the patient or the surrogate decision-maker. A copy of the signed disclosure must be maintained in the patient's file.

A disciplining authority may adopt rules to exempt certain types of sexual misconduct from the disclosure requirements. Veterinarians and veterinary technicians are not required to provide the disclosure.

Substitute Bill Compared to Original Bill:

The substitute bill:

- changes references from licensee to license holder;
- clarifies that a license holder must disclose a sanction for unprofessional conduct involving sexual misconduct for orders or stipulations issued on or after the effective date of the act. The disclosure must be provided before or during a patient's first visit with the license holder following entry of the order or stipulation, during the period the license holder is subject to the order or stipulation;
- requires the license holder to include a copy of the public order or stipulation in the disclosure and maintain a signed copy of the disclosure in the patient's file;
- exempts veterinarians and veterinary technicians from the requirements of the act;
- allows a disciplining authority to adopt rules to exempt certain types of sexual misconduct from the requirements of the act;
- defines "order" as an order issued by a disciplining authority, including, but not limited to an agreed order, default order, final order, or a reinstatement order, but does not include a summary restriction order; and
- defines "stipulation" as a stipulation to informal disposition.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect on October 1, 2019.

Staff Summary of Public Testimony:

(In support) House Bill 1198 would require health care providers to inform patients if the provider has been sanctioned for sexual misconduct. The first duty of the government is to protect the public, and this is an important step in doing that. In Seattle, restaurants must display inspection records. The public does not need to search for this information, and instead restaurants have a duty to post this information. Currently, the only place patients could find this information is to look up the provider's credential online. Few have the knowledge of how to get this information and it is not reasonable to put the burden on the patient to look for and track this information. Patients put their trust in the hands of providers. This bill would protect the public, which is the paramount duty of state medical boards. It is critically important to patients and it's the public's right to know so they can make informed decisions about their health care providers.

(Opposed) None.

(Other) This bill is taken very seriously, but there are some questions about the construction of the bill and a number of things like timing and the definition of sexual misconduct could be clarified. This bill should also apply to those registered and certified by the state.

Persons Testifying: (In support) Representative Caldier, prime sponsor; Rex Johnson, Washington Advocates for Patient Safety; and Yanling Yu.

(Other) Katie Kolan, Washington State Medical Association.

Persons Signed In To Testify But Not Testifying: None.