
HOUSE BILL 1424

State of Washington 61st Legislature 2009 Regular Session

By Representatives Appleton, Roberts, Nelson, Green, Upthegrove, and Morrell

Read first time 01/21/09. Referred to Committee on Health Care & Wellness.

1 AN ACT Relating to health professions discipline; and amending RCW
2 18.130.110, 18.130.170, and 18.130.172.

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

4 **Sec. 1.** RCW 18.130.110 and 2005 c 274 s 232 are each amended to
5 read as follows:

6 (1)(a) In the event of a finding of unprofessional conduct, the
7 disciplining authority shall prepare and serve findings of fact and an
8 order as provided in chapter 34.05 RCW, the Administrative Procedure
9 Act.

10 (b) If the license holder or applicant is found to have not
11 committed unprofessional conduct, the disciplining authority shall
12 forthwith prepare and serve findings of fact and an order of dismissal
13 of the charges, including public exoneration of the licensee or
14 applicant. If the license holder was subject to summary suspension or
15 restriction under RCW 18.130.135, the disciplining authority shall,
16 within five business days of the order of dismissal, issue the license
17 holder a new license.

18 (c) The findings of fact and order shall be retained by the
19 disciplining authority as a permanent record.

1 (2) The disciplining authority shall report the issuance of
2 statements of charges and final orders in cases processed by the
3 disciplining authority to:

4 (a) The person or agency who brought to the disciplining
5 authority's attention information which resulted in the initiation of
6 the case;

7 (b) Appropriate organizations, public or private, which serve the
8 professions;

9 (c) The public. Notification of the public shall include press
10 releases to appropriate local news media and the major news wire
11 services; and

12 (d) Counterpart licensing boards in other states, or associations
13 of state licensing boards.

14 (3) This section shall not be construed to require the reporting of
15 any information which is exempt from public disclosure under chapter
16 42.56 RCW.

17 (4) For purposes of this section, "public exoneration" includes,
18 but is not limited to, the removal of any press releases regarding the
19 disciplinary proceedings from the department's web site and the
20 modification of any other documents on the web site pertaining to the
21 disciplinary proceedings to indicate that the license holder has been
22 exonerated. The modifications to the documents on the web site must
23 use the term "exonerated."

24 **Sec. 2.** RCW 18.130.170 and 2008 c 134 s 11 are each amended to
25 read as follows:

26 (1) If the disciplining authority believes a license holder may be
27 unable to practice with reasonable skill and safety to consumers by
28 reason of any mental or physical condition, a statement of charges in
29 the name of the disciplining authority shall be served on the license
30 holder and notice shall also be issued providing an opportunity for a
31 hearing. The hearing shall be limited to the sole issue of the
32 capacity of the license holder to practice with reasonable skill and
33 safety. If the disciplining authority determines that the license
34 holder is unable to practice with reasonable skill and safety for one
35 of the reasons stated in this subsection, the disciplining authority
36 shall impose such sanctions under RCW 18.130.160 as is deemed necessary
37 to protect the public.

1 (2)(a) In investigating or adjudicating a complaint or report that
2 a license holder may be unable to practice with reasonable skill or
3 safety by reason of any mental or physical condition, the disciplining
4 authority may require a license holder to submit to a mental or
5 physical examination by one or more licensed or certified health
6 professionals designated by the disciplining authority from a roster of
7 at least ten licensed or certified health professionals maintained by
8 the disciplining authority for purposes of this subsection. The
9 license holder may request that the examination be performed by a
10 professional who is not on the disciplining authority's roster. The
11 department shall utilize the professional requested by the license
12 holder unless it finds that the professional is unqualified to perform
13 the examination or the professional is unlikely to perform the
14 examination in an impartial manner due to a preexisting relationship
15 with the license holder. If the department utilizes the professional
16 requested by the license holder, it may not pay the professional more
17 than it pays the professionals on its roster. The license holder shall
18 be provided written notice of the disciplining authority's intent to
19 order a mental or physical examination, which notice shall include:
20 (i) A statement of the specific conduct, event, or circumstances
21 justifying an examination; (ii) a summary of the evidence supporting
22 the disciplining authority's concern that the license holder may be
23 unable to practice with reasonable skill and safety by reason of a
24 mental or physical condition, and the grounds for believing such
25 evidence to be credible and reliable; (iii) a statement of the nature,
26 purpose, scope, and content of the intended examination; (iv) a
27 statement that the license holder has the right to respond in writing
28 within twenty days to challenge the disciplining authority's grounds
29 for ordering an examination or to challenge the manner or form of the
30 examination; and (v) a statement that if the license holder timely
31 responds to the notice of intent, then the license holder will not be
32 required to submit to the examination while the response is under
33 consideration.

34 (b) Upon submission of a timely response to the notice of intent to
35 order a mental or physical examination, the license holder shall have
36 an opportunity to respond to or refute such an order by submission of
37 evidence or written argument or both. The evidence and written
38 argument supporting and opposing the mental or physical examination

1 shall be reviewed by either a panel of the disciplining authority
2 members who have not been involved with the allegations against the
3 license holder or a neutral decision maker approved by the disciplining
4 authority. The reviewing panel of the disciplining authority or the
5 approved neutral decision maker may, in its discretion, ask for oral
6 argument from the parties. The reviewing panel of the disciplining
7 authority or the approved neutral decision maker shall prepare a
8 written decision as to whether: There is reasonable cause to believe
9 that the license holder may be unable to practice with reasonable skill
10 and safety by reason of a mental or physical condition, or the manner
11 or form of the mental or physical examination is appropriate, or both.

12 (c) Upon receipt by the disciplining authority of the written
13 decision, or upon the failure of the license holder to timely respond
14 to the notice of intent, the disciplining authority may issue an order
15 requiring the license holder to undergo a mental or physical
16 examination. All such mental or physical examinations shall be
17 narrowly tailored to address only the alleged mental or physical
18 condition and the ability of the license holder to practice with
19 reasonable skill and safety. An order of the disciplining authority
20 requiring the license holder to undergo a mental or physical
21 examination is not a final order for purposes of appeal. The cost of
22 the examinations ordered by the disciplining authority shall be paid
23 out of the health professions account. In addition to any examinations
24 ordered by the disciplining authority, the license holder may submit
25 physical or mental examination reports from licensed or certified
26 health professionals of the license holder's choosing and expense.

27 (d) If the disciplining authority finds that a license holder has
28 failed to submit to a properly ordered mental or physical examination,
29 then the disciplining authority may order appropriate action or
30 discipline under RCW 18.130.180(9), unless the failure was due to
31 circumstances beyond the person's control. However, no such action or
32 discipline may be imposed unless the license holder has had the notice
33 and opportunity to challenge the disciplining authority's grounds for
34 ordering the examination, to challenge the manner and form, to assert
35 any other defenses, and to have such challenges or defenses considered
36 by either a panel of the disciplining authority members who have not
37 been involved with the allegations against the license holder or a
38 neutral decision maker approved by the disciplining authority, as

1 previously set forth in this section. Further, the action or
2 discipline ordered by the disciplining authority shall not be more
3 severe than a suspension of the license, certification, registration,
4 or application until such time as the license holder complies with the
5 properly ordered mental or physical examination.

6 (e) Nothing in this section shall restrict the power of a
7 disciplining authority to act in an emergency under RCW 34.05.422(4),
8 34.05.479, and 18.130.050(8).

9 (f) A determination by a court of competent jurisdiction that a
10 license holder is mentally incompetent or an individual with mental
11 illness is presumptive evidence of the license holder's inability to
12 practice with reasonable skill and safety. An individual affected
13 under this section shall at reasonable intervals be afforded an
14 opportunity, at his or her expense, to demonstrate that the individual
15 can resume competent practice with reasonable skill and safety to the
16 consumer.

17 (3) For the purpose of subsection (2) of this section, a license
18 holder governed by this chapter, by making application, practicing, or
19 filing a license renewal, is deemed to have given consent to submit to
20 a mental, physical, or psychological examination when directed in
21 writing by the disciplining authority and further to have waived all
22 objections to the admissibility or use of the examining health
23 professional's testimony or examination reports by the disciplining
24 authority on the ground that the testimony or reports constitute
25 privileged communications.

26 **Sec. 3.** RCW 18.130.172 and 2008 c 134 s 24 are each amended to
27 read as follows:

28 (1) Prior to serving a statement of charges under RCW 18.130.090 or
29 18.130.170, the disciplinary authority may furnish a statement of
30 allegations to the licensee along with a detailed summary of the
31 evidence relied upon to establish the allegations and a proposed
32 stipulation for informal resolution of the allegations. These
33 documents shall be exempt from public disclosure until such time as the
34 allegations are resolved either by stipulation or otherwise.

35 (2) The disciplinary authority and the licensee may stipulate that
36 the allegations may be disposed of informally in accordance with this
37 subsection. The stipulation shall contain a statement of the facts

1 leading to the filing of the complaint; the act or acts of
2 unprofessional conduct alleged to have been committed or the alleged
3 basis for determining that the licensee is unable to practice with
4 reasonable skill and safety; a statement that the stipulation is not to
5 be construed as a finding of either unprofessional conduct or inability
6 to practice; a statement that the stipulation does not constitute an
7 admission on behalf of the licensee of any of the facts or acts alleged
8 in the stipulation; an acknowledgment that a finding of unprofessional
9 conduct or inability to practice, if proven, constitutes grounds for
10 discipline under this chapter; and an agreement on the part of the
11 licensee that the sanctions set forth in RCW 18.130.160, except RCW
12 18.130.160 (1), (2), (6), and (8), may be imposed as part of the
13 stipulation, except that no fine may be imposed but the licensee may
14 agree to reimburse the disciplinary authority the costs of
15 investigation and processing the complaint up to an amount not
16 exceeding one thousand dollars per allegation; and an agreement on the
17 part of the disciplinary authority to forego further disciplinary
18 proceedings concerning the allegations. A stipulation entered into
19 pursuant to this subsection shall not be considered formal disciplinary
20 action.

21 (3) If the licensee declines to agree to disposition of the charges
22 by means of a stipulation pursuant to subsection (2) of this section,
23 the disciplinary authority may proceed to formal disciplinary action
24 pursuant to RCW 18.130.090 or 18.130.170.

25 (4) Upon execution of a stipulation under subsection (2) of this
26 section by both the licensee and the disciplinary authority, the
27 complaint is deemed disposed of and shall become subject to public
28 disclosure on the same basis and to the same extent as other records of
29 the disciplinary authority. Should the licensee fail to pay any agreed
30 reimbursement within thirty days of the date specified in the
31 stipulation for payment, the disciplinary authority may seek collection
32 of the amount agreed to be paid in the same manner as enforcement of a
33 fine under RCW 18.130.165.

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