
SENATE BILL 5509

State of Washington 60th Legislature 2007 Regular Session

By Senators Kastama, Pflug, Kohl-Welles, Keiser, Parlette, Carrell, Regala and Franklin

Read first time 01/22/2007. Referred to Committee on Health & Long-Term Care.

1 AN ACT Relating to disciplinary actions for health care providers
2 regulated under chapter 18.130 RCW; amending RCW 18.130.080,
3 18.130.180, and 18.130.020; adding new sections to chapter 18.130 RCW;
4 and creating a new section.

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

6 NEW SECTION. **Sec. 1.** The legislature recognizes that Washington
7 citizens desire and receive health care and treatment from a variety of
8 professional providers. The legislature further recognizes that some
9 health care providers have used the professional disciplinary process
10 as a means of attacking other health care providers. In order to
11 prevent unwarranted attacks on other health care providers where the
12 health of the patient is not at risk, the legislature is making changes
13 in the uniform disciplinary act to ensure that all complaints against
14 health care providers are grounded in real harm to the patient rather
15 than mere disagreement about the type of treatment provided.

16 **Sec. 2.** RCW 18.130.080 and 2006 c 99 s 5 are each amended to read
17 as follows:

18 (1) A person, including but not limited to consumers, licensees,

1 corporations, organizations, health care facilities, impaired
2 practitioner programs, or voluntary substance abuse monitoring programs
3 approved by disciplining authorities, and state and local governmental
4 agencies, may submit a written complaint to the disciplining authority
5 charging a license holder or applicant with unprofessional conduct and
6 specifying the grounds therefor or to report information to the
7 disciplining authority, or voluntary substance abuse monitoring
8 program, or an impaired practitioner program approved by the
9 disciplining authority, which indicates that the license holder may not
10 be able to practice his or her profession with reasonable skill and
11 safety to consumers as a result of a mental or physical condition. The
12 complainant must sign the written complaint to the disciplining
13 authority. The members of the disciplining authority must determine as
14 to each complaint that there is probable cause to merit an
15 investigation of the allegations in the complaint by the disciplining
16 authority. If the disciplining authority determines that the complaint
17 merits an investigation, or if the disciplining authority has reason to
18 believe, without a formal complaint, that a license holder or applicant
19 may have engaged in unprofessional conduct, the disciplining authority
20 shall investigate to determine whether there has been unprofessional
21 conduct. In conducting the investigation, the disciplining authority
22 shall consult with a practitioner or practitioners who utilize the
23 procedure in question in the complaint in their practices to determine
24 whether the license holder or applicant against whom the complaint has
25 been filed is guilty of unprofessional conduct. In determining whether
26 or not to investigate, the disciplining authority shall consider any
27 prior complaints received by the disciplining authority, any prior
28 findings of fact under RCW 18.130.110, any stipulations to informal
29 disposition under RCW 18.130.172, and any comparable action taken by
30 other state disciplining authorities.

31 (2) Notwithstanding subsection (1) of this section, the
32 disciplining authority shall initiate an investigation in every
33 instance where the disciplining authority receives information that a
34 health care provider has been disqualified from participating in the
35 federal medicare program, under Title XVIII of the federal social
36 security act, or the federal medicaid program, under Title XIX of the
37 federal social security act.

1 (3) A person who files a complaint or reports information under
2 this section in good faith is immune from suit in any civil action
3 related to the filing or contents of the complaint. A complaint
4 against a license holder or applicant based solely on the use of a
5 procedure, in the absence of any proof of harm to a patient, shall not
6 be in good faith.

7 NEW SECTION. Sec. 3. A new section is added to chapter 18.130 RCW
8 to read as follows:

9 In order to sustain a complaint against a license holder or
10 applicant, the disciplining authority must provide the testimony of at
11 least one practitioner who utilizes the treatment that is the subject
12 of the complaint in question in his or her practice to establish the
13 license holder or applicant is guilty of unprofessional conduct.

14 NEW SECTION. Sec. 4. A new section is added to chapter 18.130 RCW
15 to read as follows:

16 The burden of proof for the disciplining authority in making
17 findings of fact is by clear, cogent, and convincing evidence.

18 **Sec. 5.** RCW 18.130.180 and 1995 c 336 s 9 are each amended to read
19 as follows:

20 The following conduct, acts, or conditions constitute
21 unprofessional conduct for any license holder or applicant under the
22 jurisdiction of this chapter:

23 (1) The commission of any act involving moral turpitude,
24 dishonesty, or corruption relating to the practice of the person's
25 profession, whether the act constitutes a crime or not. If the act
26 constitutes a crime, conviction in a criminal proceeding is not a
27 condition precedent to disciplinary action. Upon such a conviction,
28 however, the judgment and sentence is conclusive evidence at the
29 ensuing disciplinary hearing of the guilt of the license holder or
30 applicant of the crime described in the indictment or information, and
31 of the person's violation of the statute on which it is based. For the
32 purposes of this section, conviction includes all instances in which a
33 plea of guilty or nolo contendere is the basis for the conviction and
34 all proceedings in which the sentence has been deferred or suspended.

1 Nothing in this section abrogates rights guaranteed under chapter 9.96A
2 RCW;

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

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

6 (4) Incompetence, negligence, or malpractice which results in
7 injury to a patient or which creates an unreasonable risk that a
8 patient may be harmed. The use of a (~~nontraditional treatment~~)
9 procedure by itself shall not constitute unprofessional conduct,
10 provided that it does not result in injury to a patient (~~or create an~~
11 ~~unreasonable risk that a patient may be harmed~~) and the patient has
12 signed a writing that complies with the requirements set forth in RCW
13 7.70.060. The writing shall constitute prima facie evidence that the
14 patient gave his or her consent to the treatment that is the subject of
15 the complaint;

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

21 (6) The possession, use, prescription for use, or distribution of
22 controlled substances or legend drugs in any way other than for
23 legitimate or therapeutic purposes, diversion of controlled substances
24 or legend drugs, the violation of any drug law, or prescribing
25 controlled substances for oneself;

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

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

31 (a) Not furnishing any papers or documents;

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 accused
37 in the proceeding; or

- 1 (d) Not providing reasonable and timely access for authorized
2 representatives of the disciplining authority seeking to perform
3 practice reviews at facilities utilized by the license holder;
- 4 (9) Failure to comply with an order issued by the disciplining
5 authority or a stipulation for informal disposition entered into with
6 the disciplining authority;
- 7 (10) Aiding or abetting an unlicensed person to practice when a
8 license is required;
- 9 (11) Violations of rules established by any health agency;
- 10 (12) Practice beyond the scope of practice as defined by law or
11 rule;
- 12 (13) Misrepresentation or fraud in any aspect of the conduct of the
13 business or profession;
- 14 (14) Failure to adequately supervise auxiliary staff to the extent
15 that the consumer's health or safety is at risk;
- 16 (15) Engaging in a profession involving contact with the public
17 while suffering from a contagious or infectious disease involving
18 serious risk to public health;
- 19 (16) Promotion for personal gain of any unnecessary or
20 inefficacious drug, device, treatment, procedure, or service;
- 21 (17) Conviction of any gross misdemeanor or felony relating to the
22 practice of the person's profession. For the purposes of this
23 subsection, conviction includes all instances in which a plea of guilty
24 or nolo contendere is the basis for conviction and all proceedings in
25 which the sentence has been deferred or suspended. Nothing in this
26 section abrogates rights guaranteed under chapter 9.96A RCW;
- 27 (18) The procuring, or aiding or abetting in procuring, a criminal
28 abortion;
- 29 (19) The offering, undertaking, or agreeing to cure or treat
30 disease by a secret method, procedure, treatment, or medicine, or the
31 treating, operating, or prescribing for any health condition by a
32 method, means, or procedure which the licensee refuses to divulge upon
33 demand of the disciplining authority;
- 34 (20) The willful betrayal of a practitioner-patient privilege as
35 recognized by law;
- 36 (21) Violation of chapter 19.68 RCW;
- 37 (22) Interference with an investigation or disciplinary proceeding
38 by willful misrepresentation of facts before the disciplining authority

1 or its authorized representative, or by the use of threats or
2 harassment against any patient or witness to prevent them from
3 providing evidence in a disciplinary proceeding or any other legal
4 action, or by the use of financial inducements to any patient or
5 witness to prevent or attempt to prevent him or her from providing
6 evidence in a disciplinary proceeding;

7 (23) Current misuse of:

8 (a) Alcohol;

9 (b) Controlled substances; or

10 (c) Legend drugs;

11 (24) Abuse of a client or patient or sexual contact with a client
12 or patient;

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

20 **Sec. 6.** RCW 18.130.020 and 1995 c 336 s 1 are each amended to read
21 as follows:

22 Unless the context clearly requires otherwise, the definitions in
23 this section apply throughout this chapter.

24 (1) "Disciplining authority" means the agency, board, or commission
25 having the authority to take disciplinary action against a holder of,
26 or applicant for, a professional or business license upon a finding of
27 a violation of this chapter or a chapter specified under RCW
28 18.130.040.

29 (2) "Department" means the department of health.

30 (3) "Secretary" means the secretary of health or the secretary's
31 designee.

32 (4) "Board" means any of those boards specified in RCW 18.130.040.

33 (5) "Commission" means any of the commissions specified in RCW
34 18.130.040.

35 (6) "Unlicensed practice" means:

36 (a) Practicing a profession or operating a business identified in

1 RCW 18.130.040 without holding a valid, unexpired, unrevoked, and
2 unsuspending license to do so; or

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

8 (7) "Disciplinary action" means sanctions identified in RCW
9 18.130.160.

10 (8) "Practice review" means an investigative audit of records
11 related to the complaint, without prior identification of specific
12 patient or consumer names, or an assessment of the conditions,
13 circumstances, and methods of the professional's practice related to
14 the complaint, to determine whether unprofessional conduct may have
15 been committed.

16 (9) "Health agency" means city and county health departments and
17 the department of health.

18 (10) "License," "licensing," and "licensure" shall be deemed
19 equivalent to the terms "license," "licensing," "licensure,"
20 "certificate," "certification," and "registration" as those terms are
21 defined in RCW 18.120.020.

22 (11) "False, fraudulent, or misleading advertising" means a
23 statement that includes a misrepresentation of fact that is likely to
24 mislead or deceive because of a failure to disclose material facts,
25 that is intended or likely to create false or unjustified expectations
26 of favorable results, or that includes representations or implications
27 that in reasonable probability will cause an ordinarily prudent person
28 to misunderstand or to be deceived.

--- END ---