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SENATE BILL 5578

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State of Washington

60th Legislature

2007 Regular Session

By Senators Keiser, Kastama, Franklin and Kohl-Welles; by request of Department of Health

Read first time 01/24/2007. Referred to Committee on Health & Long-Term Care.

1 AN ACT Relating to health professions administrative penalties;  
2 amending RCW 18.130.040, 18.130.050, 18.130.140, 18.130.150,  
3 18.130.165, 18.130.170, 18.130.172, 18.130.180, 9.96A.020, and  
4 9.95.240; reenacting and amending RCW 18.130.160; adding new sections  
5 to chapter 18.130 RCW; and prescribing penalties.

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

7 **Sec. 1.** RCW 18.130.040 and 2004 c 38 s 2 are each amended to read  
8 as follows:

9 (1) This chapter applies only to the secretary and the boards and  
10 commissions having jurisdiction in relation to the professions licensed  
11 under the chapters specified in this section. This chapter does not  
12 apply to any business or profession not licensed under the chapters  
13 specified in this section.

14 (2)(a) The secretary has authority under this chapter in relation  
15 to the following professions:

16 (i) Dispensing opticians licensed and designated apprentices under  
17 chapter 18.34 RCW;

18 (ii) Naturopaths licensed under chapter 18.36A RCW;

19 (iii) Midwives licensed under chapter 18.50 RCW;

1 (iv) Ocularists licensed under chapter 18.55 RCW;  
2 (v) Massage operators and businesses licensed under chapter 18.108  
3 RCW;  
4 (vi) Dental hygienists licensed under chapter 18.29 RCW;  
5 (vii) Acupuncturists licensed under chapter 18.06 RCW;  
6 (viii) Radiologic technologists certified and X-ray technicians  
7 registered under chapter 18.84 RCW;  
8 (ix) Respiratory care practitioners licensed under chapter 18.89  
9 RCW;  
10 (x) Persons registered under chapter 18.19 RCW;  
11 (xi) Persons licensed as mental health counselors, marriage and  
12 family therapists, and social workers under chapter 18.225 RCW;  
13 (xii) Persons registered as nursing pool operators under chapter  
14 18.52C RCW;  
15 (xiii) Nursing assistants registered or certified under chapter  
16 18.88A RCW;  
17 (xiv) Health care assistants certified under chapter 18.135 RCW;  
18 (xv) Dietitians and nutritionists certified under chapter 18.138  
19 RCW;  
20 (xvi) Chemical dependency professionals certified under chapter  
21 18.205 RCW;  
22 (xvii) Sex offender treatment providers and certified affiliate sex  
23 offender treatment providers certified under chapter 18.155 RCW;  
24 (xviii) Persons licensed and certified under chapter 18.73 RCW or  
25 RCW 18.71.205;  
26 (xix) Denturists licensed under chapter 18.30 RCW;  
27 (xx) Orthotists and prosthetists licensed under chapter 18.200 RCW;  
28 (xxi) Surgical technologists registered under chapter 18.215 RCW;  
29 and  
30 (xxii) Recreational therapists.  
31 (b) The boards and commissions having authority under this chapter  
32 are as follows:  
33 (i) The podiatric medical board as established in chapter 18.22  
34 RCW;  
35 (ii) The chiropractic quality assurance commission as established  
36 in chapter 18.25 RCW;  
37 (iii) The dental quality assurance commission as established in  
38 chapter 18.32 RCW;

1 (iv) The board of hearing and speech as established in chapter  
2 18.35 RCW;

3 (v) The board of examiners for nursing home administrators as  
4 established in chapter 18.52 RCW;

5 (vi) The optometry board as established in chapter 18.54 RCW  
6 governing licenses issued under chapter 18.53 RCW;

7 (vii) The board of osteopathic medicine and surgery as established  
8 in chapter 18.57 RCW governing licenses issued under chapters 18.57 and  
9 18.57A RCW;

10 (viii) The board of pharmacy as established in chapter 18.64 RCW  
11 governing licenses issued under chapters 18.64 and 18.64A RCW;

12 (ix) The medical quality assurance commission as established in  
13 chapter 18.71 RCW governing licenses and registrations issued under  
14 chapters 18.71 and 18.71A RCW;

15 (x) The board of physical therapy as established in chapter 18.74  
16 RCW;

17 (xi) The board of occupational therapy practice as established in  
18 chapter 18.59 RCW;

19 (xii) The nursing care quality assurance commission as established  
20 in chapter 18.79 RCW governing licenses and registrations issued under  
21 that chapter;

22 (xiii) The examining board of psychology and its disciplinary  
23 committee as established in chapter 18.83 RCW; and

24 (xiv) The veterinary board of governors as established in chapter  
25 18.92 RCW.

26 (3) In addition to the authority to discipline license holders, the  
27 disciplining authority has the authority to grant or deny licenses  
28 (~~((based on the conditions and criteria established in this chapter and~~  
29 ~~the chapters specified in subsection (2) of this section)).~~ ((This  
30 ~~chapter also governs any investigation, hearing, or proceeding relating~~  
31 ~~to denial of licensure or issuance of a license conditioned on the~~  
32 ~~applicant's compliance with an order entered pursuant to RCW 18.130.160~~  
33 ~~by)) The disciplining authority may also grant a license subject to  
34 conditions.~~

35 (4) All disciplining authorities shall adopt procedures to ensure  
36 substantially consistent application of this chapter, the Uniform  
37 Disciplinary Act, among the disciplining authorities listed in  
38 subsection (2) of this section.

1        NEW SECTION.    **Sec. 2.**    (1) The legislature finds that in order to  
2 protect the public and to promote the safety of and confidence in the  
3 health care system, the disciplining authority may deny an application  
4 for licensure or grant a license with conditions if the applicant:

5        (a) Has had his or her license to practice any health care  
6 profession suspended, revoked, or restricted, by competent authority in  
7 any state, federal, or foreign jurisdiction;

8        (b) Has committed any act defined as unprofessional conduct for a  
9 license holder under RCW 18.130.180;

10       (c) Has been convicted or is subject to current prosecution or  
11 pending charges of a crime involving moral turpitude or a crime  
12 identified in RCW 43.43.830. For purposes of this section, conviction  
13 includes all instances in which a plea of guilty or nolo contendere is  
14 the basis for the conviction and all proceedings in which the  
15 prosecution or sentence has been deferred or suspended. At the request  
16 of an applicant for an original license whose conviction is under  
17 appeal, the disciplining authority may defer decision upon the  
18 application during the pendency of such a prosecution or appeal;

19       (d) Fails to prove that he or she is qualified in accordance with  
20 the provisions of this chapter, the chapters identified in RCW  
21 18.130.040(2), or the rules adopted by the disciplining authority; or

22       (e) Is not able to practice with reasonable skill and safety to  
23 consumers by reason of any mental or physical condition.

24       (i) The disciplining authority may require the applicant, at his or  
25 her own expense, to submit to a mental or physical examination by one  
26 or more licensed health professionals designated by the disciplining  
27 authority. The disciplining authority shall provide written notice of  
28 its requirement for a mental or physical examination. If the applicant  
29 fails to submit to the examination or provide the results of the  
30 examination or any required waivers, the disciplining authority may  
31 deny the application.

32       (ii) An applicant governed by this chapter is deemed to have given  
33 consent to submit to a mental, physical, or psychological examination  
34 when directed in writing by the disciplining authority and further to  
35 have waived all objections to the admissibility or use of the examining  
36 health professional's testimony or examination reports by the  
37 disciplining authority on the grounds that the testimony or reports  
38 constitute privileged communications.

1 (2) The provisions of RCW 9.95.240 and chapter 9.96A RCW do not  
2 apply to a decision to deny a license under this section.

3 (3) The disciplining authority shall give written notice to the  
4 applicant of the decision to deny a license or grant a license with  
5 conditions in response to an application for a license. The notice  
6 must state the reasons for the action and be served upon the applicant.

7 (4) A license applicant who is aggrieved by the decision to deny  
8 the license or grant the license with conditions has the right to an  
9 adjudicative proceeding. The application for adjudicative proceeding  
10 must be in writing, state the basis for contesting the adverse action,  
11 include a copy of the adverse notice, and be served on and received by  
12 the department within twenty-eight days of the decision. The license  
13 applicant has the burden to establish, by a preponderance of evidence,  
14 that the license applicant is qualified in accordance with the  
15 provisions of this chapter, the chapters identified in RCW  
16 18.130.040(2), and the rules adopted by the disciplining authority.

17 **Sec. 3.** RCW 18.130.050 and 2006 c 99 s 4 are each amended to read  
18 as follows:

19 The disciplining authority has the following authority:

20 (1) To adopt, amend, and rescind such rules as are deemed necessary  
21 to carry out this chapter;

22 (2) To investigate all complaints or reports of unprofessional  
23 conduct as defined in this chapter and to hold hearings as provided in  
24 this chapter;

25 (3) To issue subpoenas and administer oaths in connection with any  
26 investigation, consideration of an application for license, hearing, or  
27 proceeding held under this chapter;

28 (4) To take or cause depositions to be taken and use other  
29 discovery procedures as needed in any investigation, hearing, or  
30 proceeding held under this chapter;

31 (5) To compel attendance of witnesses at hearings;

32 (6) In the course of investigating a complaint or report of  
33 unprofessional conduct, to conduct practice reviews and to issue  
34 citations and assess fines for failure to produce documents, records,  
35 or other items in accordance with section 4 of this act;

36 (7) To take emergency action ordering summary suspension of a  
37 license, or restriction or limitation of the license holder's practice

1 pending proceedings by the disciplining authority. Consistent with RCW  
2 18.130.370, a disciplining authority shall issue a summary suspension  
3 of the license or temporary practice permit of a license holder  
4 prohibited from practicing a health care profession in another state,  
5 federal, or foreign jurisdiction because of an act of unprofessional  
6 conduct that is substantially equivalent to an act of unprofessional  
7 conduct prohibited by this chapter or any of the chapters specified in  
8 RCW 18.130.040. The summary suspension remains in effect until  
9 proceedings by the Washington disciplining authority have been  
10 completed;

11 (8) To use a presiding officer as authorized in RCW 18.130.095(3)  
12 or the office of administrative hearings as authorized in chapter 34.12  
13 RCW to conduct hearings. The disciplining authority shall make the  
14 final decision regarding disposition of the license unless the  
15 disciplining authority elects to delegate in writing the final decision  
16 to the presiding officer;

17 (9) To use individual members of the boards to direct  
18 investigations and to authorize the issuance of a citation under  
19 subsection (6) of this section. However, the member of the board shall  
20 not subsequently participate in the hearing of the case;

21 (10) To enter into contracts for professional services determined  
22 to be necessary for adequate enforcement of this chapter;

23 (11) To contract with licensees or other persons or organizations  
24 to provide services necessary for the monitoring and supervision of  
25 licensees who are placed on probation, whose professional activities  
26 are restricted, or who are for any authorized purpose subject to  
27 monitoring by the disciplining authority;

28 (12) To adopt standards of professional conduct or practice;

29 (13) To grant or deny license applications, and in the event of a  
30 finding of unprofessional conduct by an applicant or license holder, to  
31 impose any sanction against a license applicant or license holder  
32 provided by this chapter;

33 (14) To restrict or place conditions on the practice of new  
34 licensees in order to protect the public and promote the safety of and  
35 confidence in the health care system;

36 (15) To designate individuals authorized to sign subpoenas and  
37 statements of charges;

1       (~~(15)~~) (16) To establish panels consisting of three or more  
2 members of the board to perform any duty or authority within the  
3 board's jurisdiction under this chapter;

4       (~~(16)~~) (17) To review and audit the records of licensed health  
5 facilities' or services' quality assurance committee decisions in which  
6 a licensee's practice privilege or employment is terminated or  
7 restricted. Each health facility or service shall produce and make  
8 accessible to the disciplining authority the appropriate records and  
9 otherwise facilitate the review and audit. Information so gained shall  
10 not be subject to discovery or introduction into evidence in any civil  
11 action pursuant to RCW 70.41.200(3).

12       NEW SECTION. Sec. 4. (1)(a) A licensee must produce documents,  
13 records, or other items within twenty-one days of service of a request  
14 by a disciplining authority.

15       (b) In the event the licensee fails to produce the documents,  
16 records, or other items as requested by the disciplining authority or  
17 fails to obtain an extension of the time for response, the disciplining  
18 authority may issue a written citation and assess a fine of up to five  
19 hundred dollars per day for each day after the issuance of the citation  
20 until the documents, records, or other items are produced.

21       (2) Citations issued under this section must include the following:

22       (a) A statement that the citation represents a determination that  
23 the person named has failed to produce documents, records, or other  
24 items as required by this section and that the determination is final  
25 unless contested as provided in this section;

26       (b) A statement of the specific circumstances;

27       (c) A statement of the monetary fine, which is up to five hundred  
28 dollars per working day for each day after the issuance of the  
29 citation;

30       (d) A statement informing the licensee that if the licensee desires  
31 a hearing to contest the finding of a violation, the hearing must be  
32 requested by written notice to the disciplining authority within twenty  
33 days of the date of issuance of the citation. The hearing is limited  
34 to the issue of whether the licensee timely produced the requested  
35 documents, records, or other items or had good cause for failure to do  
36 so; and

1 (e) A statement that in the event a licensee fails to pay a fine  
2 within thirty days of the date of assessment, the full amount of the  
3 assessed fine must be added to the fee for renewal of the license  
4 unless the citation is being appealed.

5 (3) RCW 18.130.165 governs proof and enforcement of the fine.

6 (4) Administrative fines collected under this section must be  
7 deposited in the health professions account created in RCW 43.70.320.

8 (5) Issuance of a citation under this section does not preclude the  
9 disciplining authority from pursuing other action under this chapter.

10 **Sec. 5.** RCW 18.130.140 and 1984 c 279 s 14 are each amended to  
11 read as follows:

12 An individual who has been disciplined (~~(or)~~), whose license has  
13 been denied, or whose license has been granted with conditions by a  
14 disciplining authority may appeal the decision as provided in chapter  
15 34.05 RCW.

16 **Sec. 6.** RCW 18.130.150 and 1997 c 58 s 831 are each amended to  
17 read as follows:

18 A person whose license has been suspended (~~(or revoked)~~) under this  
19 chapter may petition the disciplining authority for reinstatement after  
20 an interval as determined by the disciplining authority in the order.  
21 The disciplining authority shall hold hearings on the petition and may  
22 deny the petition or may order reinstatement and impose terms and  
23 conditions as provided in RCW 18.130.160 and issue an order of  
24 reinstatement. The disciplining authority may require successful  
25 completion of an examination as a condition of reinstatement.

26 A person whose license has been suspended for noncompliance with a  
27 support order or (~~(a residential or)~~) visitation order under RCW  
28 74.20A.320 may petition for reinstatement at any time by providing the  
29 secretary a release issued by the department of social and health  
30 services stating that the person is in compliance with the order. If  
31 the person has continued to meet all other requirements for  
32 reinstatement during the suspension, the secretary shall automatically  
33 reissue the person's license upon receipt of the release, and payment  
34 of a reinstatement fee, if any.



1       **Sec. 7.** RCW 18.130.160 and 2006 c 99 s 6 and 2006 c 8 s 104 are  
2 each reenacted and amended to read as follows:

3       Upon a finding, after hearing, that a license holder (~~or~~  
4 ~~applicant~~) has committed unprofessional conduct or is unable to  
5 practice with reasonable skill and safety due to a physical or mental  
6 condition, the disciplining authority may consider the imposition of  
7 sanctions, taking into account any prior findings of fact under RCW  
8 18.130.110, any stipulations to informal disposition under RCW  
9 18.130.172, and any action taken by other in-state or out-of-state  
10 disciplining authorities, and issue an order providing for one or any  
11 combination of the following:

- 12       (1) Revocation of the license;
- 13       (2) Suspension of the license for a fixed or indefinite term;
- 14       (3) Restriction or limitation of the practice;
- 15       (4) Requiring the satisfactory completion of a specific program of  
16 remedial education or treatment;
- 17       (5) The monitoring of the practice by a supervisor approved by the  
18 disciplining authority;
- 19       (6) Censure or reprimand;
- 20       (7) Compliance with conditions of probation for a designated period  
21 of time;
- 22       (8) Payment of a fine for each violation of this chapter, not to  
23 exceed five thousand dollars per violation. Funds received shall be  
24 placed in the health professions account;
- 25       (9) Denial of the license request;
- 26       (10) Corrective action;
- 27       (11) Refund of fees billed to and collected from the consumer;
- 28       (12) A surrender of the practitioner's license in lieu of other  
29 sanctions, which must be reported to the federal data bank.

30       Surrender or revocation of a license under this section is not  
31 subject to a petition for reinstatement under RCW 18.130.150.

32       Any of the actions under this section may be totally or partly  
33 stayed by the disciplining authority. Safeguarding the public's health  
34 and safety is the paramount responsibility of every disciplining  
35 authority and in determining what action is appropriate, the  
36 disciplining authority must first consider what sanctions are necessary  
37 to protect or compensate the public. Only after such provisions have  
38 been made may the disciplining authority consider and include in the

1 order requirements designed to rehabilitate the license holder ((~~or~~  
2 ~~applicant~~)). All costs associated with compliance with orders issued  
3 under this section are the obligation of the license holder ((~~or~~  
4 ~~applicant~~)).

5 The licensee ((~~or—applicant~~)) may enter into a stipulated  
6 disposition of charges that includes one or more of the sanctions of  
7 this section, but only after a statement of charges has been issued and  
8 the licensee has been afforded the opportunity for a hearing and has  
9 elected on the record to forego such a hearing. The stipulation shall  
10 either contain one or more specific findings of unprofessional conduct  
11 or inability to practice, or a statement by the licensee acknowledging  
12 that evidence is sufficient to justify one or more specified findings  
13 of unprofessional conduct or inability to practice. The stipulation  
14 entered into pursuant to this subsection shall be considered formal  
15 disciplinary action for all purposes.

16 **Sec. 8.** RCW 18.130.165 and 1993 c 367 s 20 are each amended to  
17 read as follows:

18 Where an order for payment of a fine is made as a result of a  
19 citation under section 4 of this act or a hearing under RCW 18.130.100  
20 or 18.130.190 and timely payment is not made as directed in the final  
21 order, the disciplining authority may enforce the order for payment in  
22 the superior court in the county in which the hearing was held. This  
23 right of enforcement shall be in addition to any other rights the  
24 disciplining authority may have as to any licensee ordered to pay a  
25 fine but shall not be construed to limit a licensee's ability to seek  
26 judicial review under RCW 18.130.140.

27 In any action for enforcement of an order of payment of a fine, the  
28 disciplining authority's order is conclusive proof of the validity of  
29 the order of payment of a fine and the terms of payment.

30 **Sec. 9.** RCW 18.130.170 and 1995 c 336 s 8 are each amended to read  
31 as follows:

32 (1) If the disciplining authority believes a license holder ((~~or~~  
33 ~~applicant~~)) may be unable to practice with reasonable skill and safety  
34 to consumers by reason of any mental or physical condition, a statement  
35 of charges in the name of the disciplining authority shall be served on  
36 the license holder ((~~or—applicant~~)) and notice shall also be issued

1 providing an opportunity for a hearing. The hearing shall be limited  
2 to the sole issue of the capacity of the license holder (~~or~~  
3 ~~applicant~~) to practice with reasonable skill and safety. If the  
4 disciplining authority determines that the license holder (~~or~~  
5 ~~applicant~~) is unable to practice with reasonable skill and safety for  
6 one of the reasons stated in this subsection, the disciplining  
7 authority shall impose such sanctions under RCW 18.130.160 as is deemed  
8 necessary to protect the public.

9 (2)(a) In investigating or adjudicating a complaint or report that  
10 a license holder (~~or applicant~~) may be unable to practice with  
11 reasonable skill or safety by reason of any mental or physical  
12 condition, the disciplining authority may require a license holder (~~or~~  
13 ~~applicant~~) to submit to a mental or physical examination by one or  
14 more licensed or certified health professionals designated by the  
15 disciplining authority. The license holder (~~or applicant~~) shall be  
16 provided written notice of the disciplining authority's intent to order  
17 a mental or physical examination, which notice shall include: (i) A  
18 statement of the specific conduct, event, or circumstances justifying  
19 an examination; (ii) a summary of the evidence supporting the  
20 disciplining authority's concern that the license holder (~~or~~  
21 ~~applicant~~) may be unable to practice with reasonable skill and safety  
22 by reason of a mental or physical condition, and the grounds for  
23 believing such evidence to be credible and reliable; (iii) a statement  
24 of the nature, purpose, scope, and content of the intended examination;  
25 (iv) a statement that the license holder (~~or applicant~~) has the right  
26 to respond in writing within twenty days to challenge the disciplining  
27 authority's grounds for ordering an examination or to challenge the  
28 manner or form of the examination; and (v) a statement that if the  
29 license holder (~~or applicant~~) timely responds to the notice of  
30 intent, then the license holder (~~or applicant~~) will not be required  
31 to submit to the examination while the response is under consideration.

32 (b) Upon submission of a timely response to the notice of intent to  
33 order a mental or physical examination, the license holder (~~or~~  
34 ~~applicant~~) shall have an opportunity to respond to or refute such an  
35 order by submission of evidence or written argument or both. The  
36 evidence and written argument supporting and opposing the mental or  
37 physical examination shall be reviewed by either a panel of the  
38 disciplining authority members who have not been involved with the

1 allegations against the license holder ((~~or applicant~~)) or a neutral  
2 decision maker approved by the disciplining authority. The reviewing  
3 panel of the disciplining authority or the approved neutral decision  
4 maker may, in its discretion, ask for oral argument from the parties.  
5 The reviewing panel of the disciplining authority or the approved  
6 neutral decision maker shall prepare a written decision as to whether:  
7 There is reasonable cause to believe that the license holder ((~~or~~  
8 ~~applicant~~)) may be unable to practice with reasonable skill and safety  
9 by reason of a mental or physical condition, or the manner or form of  
10 the mental or physical examination is appropriate, or both.

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

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

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

7 (e) Nothing in this section shall restrict the power of a  
8 disciplining authority to act in an emergency under RCW 34.05.422(4),  
9 34.05.479, and 18.130.050(7).

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

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

27 **Sec. 10.** RCW 18.130.172 and 2000 c 171 s 29 are each amended to  
28 read as follows:

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

36 (2) The disciplinary authority and the (~~applicant or~~) licensee  
37 may stipulate that the allegations may be disposed of informally in

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

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

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

33 **Sec. 11.** RCW 18.130.180 and 1995 c 336 s 9 are each amended to  
34 read as follows:

35 The following conduct, acts, or conditions constitute  
36 unprofessional conduct for any license holder ((~~or applicant~~)) under  
37 the jurisdiction of this chapter:

1           (1) The commission of any act involving moral turpitude,  
2 dishonesty, or corruption relating to the practice of the person's  
3 profession, whether the act constitutes a crime or not. If the act  
4 constitutes a crime, conviction in a criminal proceeding is not a  
5 condition precedent to disciplinary action. Upon such a conviction,  
6 however, the judgment and sentence is conclusive evidence at the  
7 ensuing disciplinary hearing of the guilt of the license holder or  
8 applicant of the crime described in the indictment or information, and  
9 of the person's violation of the statute on which it is based. For the  
10 purposes of this section, conviction includes all instances in which a  
11 plea of guilty or nolo contendere is the basis for the conviction and  
12 all proceedings in which the sentence has been deferred or suspended.  
13 Nothing in this section abrogates rights guaranteed under chapter 9.96A  
14 RCW;

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

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

18           (4) Incompetence, negligence, or malpractice which results in  
19 injury to a patient or which creates an unreasonable risk that a  
20 patient may be harmed. The use of a nontraditional treatment by itself  
21 shall not constitute unprofessional conduct, provided that it does not  
22 result in injury to a patient or create an unreasonable risk that a  
23 patient may be harmed;

24           (5) Suspension, revocation, or restriction of the individual's  
25 license to practice any health care profession by competent authority  
26 in any state, federal, or foreign jurisdiction, a certified copy of the  
27 order, stipulation, or agreement being conclusive evidence of the  
28 revocation, suspension, or restriction;

29           (6) The possession, use, prescription for use, or distribution of  
30 controlled substances or legend drugs in any way other than for  
31 legitimate or therapeutic purposes, diversion of controlled substances  
32 or legend drugs, the violation of any drug law, or prescribing  
33 controlled substances for oneself;

34           (7) Violation of any state or federal statute or administrative  
35 rule regulating the profession in question, including any statute or  
36 rule defining or establishing standards of patient care or professional  
37 conduct or practice;

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

- 1 (a) Not furnishing any papers ((~~or~~)), documents, records, or other  
2 items;
- 3 (b) Not furnishing in writing a full and complete explanation  
4 covering the matter contained in the complaint filed with the  
5 disciplining authority;
- 6 (c) Not responding to subpoenas issued by the disciplining  
7 authority, whether or not the recipient of the subpoena is the accused  
8 in the proceeding; or
- 9 (d) Not providing reasonable and timely access for authorized  
10 representatives of the disciplining authority seeking to perform  
11 practice reviews at facilities utilized by the license holder;
- 12 (9) Failure to comply with an order issued by the disciplining  
13 authority or a stipulation for informal disposition entered into with  
14 the disciplining authority;
- 15 (10) Aiding or abetting an unlicensed person to practice when a  
16 license is required;
- 17 (11) Violations of rules established by any health agency;
- 18 (12) Practice beyond the scope of practice as defined by law or  
19 rule;
- 20 (13) Misrepresentation or fraud in any aspect of the conduct of the  
21 business or profession;
- 22 (14) Failure to adequately supervise auxiliary staff to the extent  
23 that the consumer's health or safety is at risk;
- 24 (15) Engaging in a profession involving contact with the public  
25 while suffering from a contagious or infectious disease involving  
26 serious risk to public health;
- 27 (16) Promotion for personal gain of any unnecessary or  
28 inefficacious drug, device, treatment, procedure, or service;
- 29 (17) Conviction of any gross misdemeanor or felony relating to the  
30 practice of the person's profession. For the purposes of this  
31 subsection, conviction includes all instances in which a plea of guilty  
32 or nolo contendere is the basis for conviction and all proceedings in  
33 which the sentence has been deferred or suspended. Nothing in this  
34 section abrogates rights guaranteed under chapter 9.96A RCW;
- 35 (18) The procuring, or aiding or abetting in procuring, a criminal  
36 abortion;
- 37 (19) The offering, undertaking, or agreeing to cure or treat  
38 disease by a secret method, procedure, treatment, or medicine, or the



1 treating, operating, or prescribing for any health condition by a  
2 method, means, or procedure which the licensee refuses to divulge upon  
3 demand of the disciplining authority;

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

6 (21) Violation of chapter 19.68 RCW;

7 (22) Interference with an investigation or disciplinary proceeding  
8 by willful misrepresentation of facts before the disciplining authority  
9 or its authorized representative, or by the use of threats or  
10 harassment against any patient or witness to prevent them from  
11 providing evidence in a disciplinary proceeding or any other legal  
12 action, or by the use of financial inducements to any patient or  
13 witness to prevent or attempt to prevent him or her from providing  
14 evidence in a disciplinary proceeding;

15 (23) Current misuse of:

16 (a) Alcohol;

17 (b) Controlled substances; or

18 (c) Legend drugs;

19 (24) Abuse of a client or patient or sexual contact with a client  
20 or patient;

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

28 **Sec. 12.** RCW 9.96A.020 and 1999 c 16 s 1 are each amended to read  
29 as follows:

30 (1) Subject to the exceptions in subsections (3) and (4) of this  
31 section, and unless there is another provision of law to the contrary,  
32 a person is not disqualified from employment by the state of Washington  
33 or any of its counties, cities, towns, municipal corporations, or  
34 quasi-municipal corporations, nor is a person disqualified to practice,  
35 pursue or engage in any occupation, trade, vocation, or business for  
36 which a license, permit, certificate, or registration is required to be  
37 issued by the state of Washington or any of its counties, cities,

1 towns, municipal corporations, or quasi-municipal corporations solely  
2 because of a prior conviction of a felony. However, this section does  
3 not preclude the fact of any prior conviction of a crime from being  
4 considered.

5 (2) A person may be denied employment by the state of Washington or  
6 any of its counties, cities, towns, municipal corporations, or quasi-  
7 municipal corporations, or a person may be denied a license, permit,  
8 certificate or registration to pursue, practice, or engage in an  
9 occupation, trade, vocation, or business by reason of the prior  
10 conviction of a felony if the felony for which he or she was convicted  
11 directly relates to the position of employment sought or to the  
12 specific occupation, trade, vocation, or business for which the  
13 license, permit, certificate, or registration is sought, and the time  
14 elapsed since the conviction is less than ten years. However, for  
15 positions in the county treasurer's office, a person may be  
16 disqualified from employment because of a prior guilty plea or  
17 conviction of a felony involving embezzlement or theft, even if the  
18 time elapsed since the guilty plea or conviction is ten years or more.

19 (3) A person is disqualified for any certificate required or  
20 authorized under chapters 28A.405 or 28A.410 RCW, because of a prior  
21 guilty plea or the conviction of a felony involving sexual exploitation  
22 of a child under chapter 9.68A RCW, sexual offenses under chapter 9A.44  
23 RCW where a minor is the victim, promoting prostitution of a minor  
24 under chapter 9A.88 RCW, or a violation of similar laws of another  
25 jurisdiction, even if the time elapsed since the guilty plea or  
26 conviction is ten years or more.

27 (4) A person is disqualified from employment by school districts,  
28 educational service districts, and their contractors hiring employees  
29 who will have regularly scheduled unsupervised access to children,  
30 because of a prior guilty plea or conviction of a felony involving  
31 sexual exploitation of a child under chapter 9.68A RCW, sexual offenses  
32 under chapter 9A.44 RCW where a minor is the victim, promoting  
33 prostitution of a minor under chapter 9A.88 RCW, or a violation of  
34 similar laws of another jurisdiction, even if the time elapsed since  
35 the guilty plea or conviction is ten years or more.

36 (5) The provisions of this chapter do not apply to issuance of  
37 licenses or credentials for professions regulated under chapter 18.130  
38 RCW.

1        (6) Subsections (3) and (4) of this section only apply to a person  
2 applying for a certificate or for employment on or after July 25, 1993.  
3 Subsection (5) of this section only applies to a person applying for a  
4 license or credential on or after the effective date of this section.

5        **Sec. 13.** RCW 9.95.240 and 2003 c 66 s 1 are each amended to read  
6 as follows:

7        (1) Every defendant who has fulfilled the conditions of his or her  
8 probation for the entire period thereof, or who shall have been  
9 discharged from probation prior to the termination of the period  
10 thereof, may at any time prior to the expiration of the maximum period  
11 of punishment for the offense for which he or she has been convicted be  
12 permitted in the discretion of the court to withdraw his or her plea of  
13 guilty and enter a plea of not guilty, or if he or she has been  
14 convicted after a plea of not guilty, the court may in its discretion  
15 set aside the verdict of guilty; and in either case, the court may  
16 thereupon dismiss the information or indictment against such defendant,  
17 who shall thereafter be released from all penalties and disabilities  
18 resulting from the offense or crime of which he or she has been  
19 convicted. The probationer shall be informed of this right in his or  
20 her probation papers: PROVIDED, That in any subsequent prosecution,  
21 for any other offense, such prior conviction may be pleaded and proved,  
22 and shall have the same effect as if probation had not been granted, or  
23 the information or indictment dismissed.

24        (2)(a) After the period of probation has expired, the defendant may  
25 apply to the sentencing court for a vacation of the defendant's record  
26 of conviction under RCW 9.94A.640. The court may, in its discretion,  
27 clear the record of conviction if it finds the defendant has met the  
28 equivalent of the tests in RCW 9.94A.640(2) as those tests would be  
29 applied to a person convicted of a crime committed before July 1, 1984.

30        (b) The clerk of the court in which the vacation order is entered  
31 shall immediately transmit the order vacating the conviction to the  
32 Washington state patrol identification section and to the local police  
33 agency, if any, which holds criminal history information for the person  
34 who is the subject of the conviction. The Washington state patrol and  
35 any such local police agency shall immediately update their records to  
36 reflect the vacation of the conviction, and shall transmit the order  
37 vacating the conviction to the federal bureau of investigation. A

1 conviction that has been vacated under this section may not be  
2 disseminated or disclosed by the state patrol or local law enforcement  
3 agency to any person, except other criminal justice enforcement  
4 agencies.

5 (3) This section does not apply to chapter 18.130 RCW.

6 NEW SECTION. **Sec. 14.** Sections 2 and 4 of this act are each added  
7 to chapter 18.130 RCW.

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