

Washington:

Notes: This bill was introduced in 2006 and is still in process. In March, it passed 1 house, but in April the 2nd house sent it back to the first house early in the process (not a good sign). this is a quasi-freedom bill and does it in a round-a-bout way: In the event that any proof of harm to a patient is not presented and the complaint is based solely on the use of a procedure, the complaint is not in good faith. So it can have the effect of protecting alternative health care providers – no one can bring a complaint just because you are using a procedure that "belongs" to someone else. But it is very convoluted to get there.

SB 5509-S2 - DIGEST - A summary:

(AS OF SENATE 2ND READING 3/13/2007)

Recognizes that Washington citizens desire and receive health care and treatment from a variety of professional providers.

Recognizes that some health care providers have used the professional disciplinary process as a means of attacking other health care providers. In order to prevent unwarranted attacks on other health care providers where the health of the patient is not at risk, the legislature is making changes in the uniform disciplinary act to ensure that all complaints against health care providers are grounded in real harm to the patient rather than mere disagreement about the type of treatment provided.

S-2566.1

SECOND SUBSTITUTE SENATE BILL 5509

State of Washington 60th Legislature 2007 Regular Session

By Senate Committee on Ways & Means (originally sponsored by Senators Kastama, Pflug, Kohl-Welles, Keiser, Parlette, Carrell, Regala and Franklin)

READ FIRST TIME 03/05/07.

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 a new section 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 procedure 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,
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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 or the complainant's guardian or legal representative
must
13 sign the written complaint to the disciplining authority. The members
14 of the disciplining authority must determine as to each complaint
that
15 there is probable cause to merit an investigation of the allegations
in
16 the complaint by the disciplining authority. If the disciplining
17 authority determines that the complaint merits an investigation, or
if
18 the disciplining authority has reason to believe, without a formal
19 complaint, that a license holder or applicant may have engaged in
20 unprofessional conduct, the disciplining authority shall investigate
to
21 determine whether there has been unprofessional conduct. In
conducting
22 the investigation, the disciplining authority may consult with a
23 practitioner or practitioners who utilize the procedure in question
in
24 the complaint in their practices to determine whether the license
25 holder or applicant against whom the complaint has been filed is
guilty
26 of unprofessional conduct. In determining whether or not to
27 investigate, the disciplining authority shall consider any prior
28 complaints received by the disciplining authority, any prior findings
29 of fact under RCW 18.130.110, any stipulations to informal
disposition
30 under RCW 18.130.172, and any comparable action taken by other state

31 disciplining authorities.

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

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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
11 at

12 least one practitioner who utilizes the procedure that is the subject
13 of the complaint in question in his or her practice, or when there is
14 no practitioner who utilizes the procedure in question that is
15 readily

16 available, a practitioner who practices complementary alternative
17 medicine may be used, to establish the license holder or applicant is
18 guilty of unprofessional conduct.

19 **Sec. 4.** RCW 18.130.180 and 1995 c 336 s 9 are each amended to read
20 as follows:

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

24 (1) The commission of any act involving moral turpitude,
25 dishonesty, or corruption relating to the practice of the person's
26 profession, whether the act constitutes a crime or not. If the act
27 constitutes a crime, conviction in a criminal proceeding is not a
28 condition precedent to disciplinary action. Upon such a conviction,
29 however, the judgment and sentence is conclusive evidence at the
30 ensuing disciplinary hearing of the guilt of the license holder or
31 applicant of the crime described in the indictment or information,
32 and

33 of the person's violation of the statute on which it is based. For
34 the

35 purposes of this section, conviction includes all instances in which
36 a

37 plea of guilty or nolo contendere is the basis for the conviction and
38 all proceedings in which the sentence has been deferred or suspended.

34 Nothing in this section abrogates rights guaranteed under chapter
9.96A

35 RCW;

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

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

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

13 the complaint;

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
the

17 order, stipulation, or agreement being conclusive evidence of the
18 revocation, suspension, or restriction;

19 (6) The possession, use, prescription for use, or distribution of
20 controlled substances or legend drugs in any way other than for
21 legitimate or therapeutic purposes, diversion of controlled
substances

22 or legend drugs, the violation of any drug law, or prescribing
23 controlled substances for oneself;

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

27 conduct or practice;

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

29 (a) Not furnishing any papers or documents;

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

33 (c) Not responding to subpoenas issued by the disciplining
34 authority, whether or not the recipient of the subpoena is the
accused

35 in the proceeding; or

36 (d) Not providing reasonable and timely access for authorized
37 representatives of the disciplining authority seeking to perform
38 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 the
10 business or profession;
- 11 (14) Failure to adequately supervise auxiliary staff to the extent
12 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 the
19 practice of the person's profession. For the purposes of this
20 subsection, conviction includes all instances in which a plea of
guilty
21 or nolo contendere is the basis for conviction and all proceedings in
22 which the sentence has been deferred or suspended. Nothing in this
23 section abrogates rights guaranteed under chapter 9.96A RCW;
- 24 (18) The procuring, or aiding or abetting in procuring, a criminal
25 abortion;
- 26 (19) The offering, undertaking, or agreeing to cure or treat
27 disease by a secret method, procedure, treatment, or medicine, or the
28 treating, operating, or prescribing for any health condition by a
29 method, means, or procedure which the licensee refuses to divulge
upon
30 demand of the disciplining authority;
- 31 (20) The willful betrayal of a practitioner-patient privilege as
32 recognized by law;
- 33 (21) Violation of chapter 19.68 RCW;
- 34 (22) Interference with an investigation or disciplinary proceeding
35 by willful misrepresentation of facts before the disciplining
authority
36 or its authorized representative, or by the use of threats or
37 harassment against any patient or witness to prevent them from
38 providing evidence in a disciplinary proceeding or any other legal
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1 action, or by the use of financial inducements to any patient or
2 witness to prevent or attempt to prevent him or her from providing
3 evidence in a disciplinary proceeding;
- 4 (23) Current misuse of:

5 (a) Alcohol;
6 (b) Controlled substances; or
7 (c) Legend drugs;
8 (24) Abuse of a client or patient or sexual contact with a client
9 or patient;
10 (25) Acceptance of more than a nominal gratuity, hospitality, or
11 subsidy offered by a representative or vendor of medical or health-
12 related products or services intended for patients, in contemplation
13 of
14 a sale or for use in research publishable in professional journals,
15 where a conflict of interest is presented, as defined by rules of the
16 disciplining authority, in consultation with the department, based on
17 recognized professional ethical standards.
18 **Sec. 5.** RCW 18.130.020 and 1995 c 336 s 1 are each amended to read
19 as follows:
20 Unless the context clearly requires otherwise, the definitions in
21 this section apply throughout this chapter.
22 (1) "Disciplining authority" means the agency, board, or commission
23 having the authority to take disciplinary action against a holder of,
24 or applicant for, a professional or business license upon a finding
25 of
26 a violation of this chapter or a chapter specified under RCW
27 18.130.040.
28 (2) "Department" means the department of health.
29 (3) "Secretary" means the secretary of health or the secretary's
30 designee.
31 (4) "Board" means any of those boards specified in RCW 18.130.040.
32 (5) "Commission" means any of the commissions specified in RCW
33 18.130.040.
34 (6) "Unlicensed practice" means:
35 (a) Practicing a profession or operating a business identified in
36 RCW 18.130.040 without holding a valid, unexpired, unrevoked, and
37 unsuspended license to do so; or
38 (b) Representing to a consumer, through offerings, advertisements,
39 or use of a professional title or designation, that the individual is
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41 qualified to practice a profession or operate a business identified in
42 RCW 18.130.040, without holding a valid, unexpired, unrevoked, and
43 unsuspended license to do so.
44 (7) "Disciplinary action" means sanctions identified in RCW
45 18.130.160.
46 (8) "Practice review" means an investigative audit of records
47 related to the complaint, without prior identification of specific
48 patient or consumer names, or an assessment of the conditions,
49 circumstances, and methods of the professional's practice related to
50 the complaint, to determine whether unprofessional conduct may have
51 been committed.

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

14 (10) "License," "licensing," and "licensure" shall be deemed
15 equivalent to the terms "license," "licensing," "licensure,"
16 "certificate," "certification," and "registration" as those terms are
17 defined in RCW 18.120.020.

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

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