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**SENATE BILL 5400**

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**State of Washington**

**68th Legislature**

**2023 Regular Session**

**By** Senators Salomon, Saldaña, Kuderer, Rolfes, and Randall

1 AN ACT Relating to actions by health professions disciplining  
2 authorities against license applicants and license holders for  
3 providing reproductive health care services or gender affirming  
4 treatment; amending RCW 18.130.180; reenacting and amending RCW  
5 18.130.055; and adding a new section to chapter 18.130 RCW.

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

7 **Sec. 1.** RCW 18.130.055 and 2019 c 446 s 46 and 2019 c 444 s 24  
8 are each reenacted and amended to read as follows:

9 (1) The disciplining authority may deny an application for  
10 licensure or grant a license with conditions if the applicant:

11 (a) Has had his or her license to practice any health care  
12 profession suspended, revoked, or restricted, by competent authority  
13 in any state, federal, or foreign jurisdiction, except as provided in  
14 section 3 of this act;

15 (b) Has committed any act defined as unprofessional conduct for a  
16 license holder under RCW 18.130.180, except as provided in RCW  
17 9.97.020 and section 3 of this act;

18 (c) Has been convicted or is subject to current prosecution or  
19 pending charges of a crime involving moral turpitude or a crime  
20 identified in RCW 43.43.830, except as provided in RCW 9.97.020,  
21 18.205.097, and 18.19.095. For purposes of this section, conviction

1 includes all instances in which a plea of guilty or nolo contendere  
2 is the basis for the conviction and all proceedings in which the  
3 prosecution or sentence has been deferred or suspended. At the  
4 request of an applicant for an original license whose conviction is  
5 under appeal, the disciplining authority may defer decision upon the  
6 application during the pendency of such a prosecution or appeal;

7 (d) Fails to prove that he or she is qualified in accordance with  
8 the provisions of this chapter, the chapters identified in RCW  
9 18.130.040(2), or the rules adopted by the disciplining authority; or

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

12 (i) The disciplining authority may require the applicant, at his  
13 or her own expense, to submit to a mental, physical, or psychological  
14 examination by one or more licensed health professionals designated  
15 by the disciplining authority. The disciplining authority shall  
16 provide written notice of its requirement for a mental or physical  
17 examination that includes a statement of the specific conduct, event,  
18 or circumstances justifying an examination and a statement of the  
19 nature, purpose, scope, and content of the intended examination. If  
20 the applicant fails to submit to the examination or provide the  
21 results of the examination or any required waivers, the disciplining  
22 authority may deny the application.

23 (ii) An applicant governed by this chapter is deemed to have  
24 given consent to submit to a mental, physical, or psychological  
25 examination when directed in writing by the disciplining authority  
26 and further to have waived all objections to the admissibility or use  
27 of the examining health professional's testimony or examination  
28 reports by the disciplining authority on the grounds that the  
29 testimony or reports constitute privileged communications.

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

32 (3) The disciplining authority shall give written notice to the  
33 applicant of the decision to deny a license or grant a license with  
34 conditions in response to an application for a license. The notice  
35 must state the grounds and factual basis for the action and be served  
36 upon the applicant.

37 (4) A license applicant who is aggrieved by the decision to deny  
38 the license or grant the license with conditions has the right to an  
39 adjudicative proceeding. The application for adjudicative proceeding  
40 must be in writing, state the basis for contesting the adverse

1 action, include a copy of the adverse notice, and be served on and  
2 received by the department within twenty-eight days of the decision.  
3 The license applicant has the burden to establish, by a preponderance  
4 of evidence, that the license applicant is qualified in accordance  
5 with the provisions of this chapter, the chapters identified in RCW  
6 18.130.040(2), and the rules adopted by the disciplining authority.

7 **Sec. 2.** RCW 18.130.180 and 2021 c 157 s 7 are each amended to  
8 read as follows:

9 ~~((The))~~ Except as provided in section 3 of this act, the  
10 following conduct, acts, or conditions constitute unprofessional  
11 conduct for any license holder under the jurisdiction of this  
12 chapter:

13 (1) The commission of any act involving moral turpitude,  
14 dishonesty, or corruption relating to the practice of the person's  
15 profession, whether the act constitutes a crime or not. If the act  
16 constitutes a crime, conviction in a criminal proceeding is not a  
17 condition precedent to disciplinary action. Upon such a conviction,  
18 however, the judgment and sentence is conclusive evidence at the  
19 ensuing disciplinary hearing of the guilt of the license holder of  
20 the crime described in the indictment or information, and of the  
21 person's violation of the statute on which it is based. For the  
22 purposes of this section, conviction includes all instances in which  
23 a plea of guilty or nolo contendere is the basis for the conviction  
24 and all proceedings in which the sentence has been deferred or  
25 suspended. Nothing in this section abrogates rights guaranteed under  
26 chapter 9.96A RCW;

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

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

30 (4) Incompetence, negligence, or malpractice which results in  
31 injury to a patient or which creates an unreasonable risk that a  
32 patient may be harmed. The use of a nontraditional treatment by  
33 itself shall not constitute unprofessional conduct, provided that it  
34 does not result in injury to a patient or create an unreasonable risk  
35 that a patient may be harmed;

36 (5) Suspension, revocation, or restriction of the individual's  
37 license to practice any health care profession by competent authority  
38 in any state, federal, or foreign jurisdiction, a certified copy of

1 the order, stipulation, or agreement being conclusive evidence of the  
2 revocation, suspension, or restriction;

3 (6) (~~Except when authorized by RCW 18.130.345, the~~) The  
4 possession, use, prescription for use, or distribution of controlled  
5 substances or legend drugs in any way other than for legitimate or  
6 therapeutic purposes, diversion of controlled substances or legend  
7 drugs, the violation of any drug law, or prescribing controlled  
8 substances for oneself;

9 (7) Violation of any state or federal statute or administrative  
10 rule regulating the profession in question, including any statute or  
11 rule defining or establishing standards of patient care or  
12 professional conduct or practice;

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

14 (a) Not furnishing any papers, documents, records, or other  
15 items;

16 (b) Not furnishing in writing a full and complete explanation  
17 covering the matter contained in the complaint filed with the  
18 disciplining authority;

19 (c) Not responding to subpoenas issued by the disciplining  
20 authority, whether or not the recipient of the subpoena is the  
21 accused in the proceeding; or

22 (d) Not providing reasonable and timely access for authorized  
23 representatives of the disciplining authority seeking to perform  
24 practice reviews at facilities utilized by the license holder;

25 (9) Failure to comply with an order issued by the disciplining  
26 authority or a stipulation for informal disposition entered into with  
27 the disciplining authority;

28 (10) Aiding or abetting an unlicensed person to practice when a  
29 license is required;

30 (11) Violations of rules established by any health agency;

31 (12) Practice beyond the scope of practice as defined by law or  
32 rule;

33 (13) Misrepresentation or fraud in any aspect of the conduct of  
34 the business or profession;

35 (14) Failure to adequately supervise auxiliary staff to the  
36 extent that the consumer's health or safety is at risk;

37 (15) Engaging in a profession involving contact with the public  
38 while suffering from a contagious or infectious disease involving  
39 serious risk to public health;

1 (16) Promotion for personal gain of any unnecessary or  
2 inefficacious drug, device, treatment, procedure, or service;

3 (17) Conviction of any gross misdemeanor or felony relating to  
4 the practice of the person's profession. For the purposes of this  
5 subsection, conviction includes all instances in which a plea of  
6 guilty or nolo contendere is the basis for conviction and all  
7 proceedings in which the sentence has been deferred or suspended.  
8 Nothing in this section abrogates rights guaranteed under chapter  
9 9.96A RCW;

10 (18) ~~((The procuring, or aiding or abetting in procuring, a  
11 eriminal abortion;~~

12 ~~(19))~~ The offering, undertaking, or agreeing to cure or treat  
13 disease by a secret method, procedure, treatment, or medicine, or the  
14 treating, operating, or prescribing for any health condition by a  
15 method, means, or procedure which the licensee refuses to divulge  
16 upon demand of the disciplining authority;

17 ~~((20))~~ (19) The willful betrayal of a practitioner-patient  
18 privilege as recognized by law;

19 ~~((21))~~ (20) Violation of chapter 19.68 RCW or a pattern of  
20 violations of RCW 41.05.700(8), 48.43.735(8), 48.49.020, 48.49.030,  
21 71.24.335(8), or 74.09.325(8);

22 ~~((22))~~ (21) Interference with an investigation or disciplinary  
23 proceeding by willful misrepresentation of facts before the  
24 disciplining authority or its authorized representative, or by the  
25 use of threats or harassment against any patient or witness to  
26 prevent them from providing evidence in a disciplinary proceeding or  
27 any other legal action, or by the use of financial inducements to any  
28 patient or witness to prevent or attempt to prevent him or her from  
29 providing evidence in a disciplinary proceeding;

30 ~~((23))~~ (22) Current misuse of:

31 (a) Alcohol;

32 (b) Controlled substances; or

33 (c) Legend drugs;

34 ~~((24))~~ (23) Abuse of a client or patient or sexual contact with  
35 a client or patient;

36 ~~((25))~~ (24) Acceptance of more than a nominal gratuity,  
37 hospitality, or subsidy offered by a representative or vendor of  
38 medical or health-related products or services intended for patients,  
39 in contemplation of a sale or for use in research publishable in  
40 professional journals, where a conflict of interest is presented, as

1 defined by rules of the disciplining authority, in consultation with  
2 the department, based on recognized professional ethical standards;

3 ~~((26))~~ (25) Violation of RCW 18.130.420;

4 ~~((27))~~ (26) Performing conversion therapy on a patient under  
5 age eighteen;

6 ~~((28))~~ (27) Violation of RCW 18.130.430.

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

9 (1) Notwithstanding RCW 18.130.180, the following shall not  
10 constitute unprofessional conduct under this chapter:

11 (a) The provision of, authorization of, recommendation of, aiding  
12 in, assistance in, referral for, or other participation in any  
13 reproductive health care services or gender affirming treatment, by a  
14 license holder acting in accordance with the laws of this state,  
15 including those relating to accepted standards of care, regardless of  
16 whether the patient is a resident of this state or another state;

17 (b) A conviction or disciplinary action based solely on the  
18 license holder's violation of another state's laws prohibiting the  
19 provision of, authorization of, recommendation of, aiding in,  
20 assistance in, referral for, or other participation in any  
21 reproductive health care services or gender affirming treatment.

22 (2) Except as required by chapter 18.71B RCW, the following,  
23 alone or in combination, shall not serve as the basis for a denial of  
24 an application for licensure, licensure renewal, or temporary  
25 practice permit, or for any other disciplinary action by a  
26 disciplining authority against an applicant or license holder:

27 (a) The provision of, authorization of, recommendation of, aiding  
28 in, assistance in, referral for, or other participation in any  
29 reproductive health care services or gender affirming treatment, by a  
30 license holder acting in accordance with the laws of this state,  
31 including those relating to accepted standards of care, regardless of  
32 whether the patient is a resident of this state or another state;

33 (b) A conviction or disciplinary action based solely on the  
34 license holder's violation of another state's laws prohibiting the  
35 provision of, authorization of, recommendation of, aiding in,  
36 assistance in, referral for, or other participation in any  
37 reproductive health care services or gender affirming treatment.

38 (3) Nothing in this section shall be construed to expand the  
39 scope of practice of any license holder licensed under this title,

1 nor does this section give any such license holder the authority to  
2 act outside their scope of practice as defined under this title.

3 (4) For the purposes of this section the following definitions  
4 apply:

5 (a) "Gender affirming treatment" means a service or product that  
6 a health care provider, as defined in RCW 70.02.010, provides to an  
7 individual to support and affirm the individual's gender identity.  
8 "Gender affirming treatment" includes, but is not limited to,  
9 treatment for gender dysphoria. "Gender affirming treatment" can be  
10 provided to two spirit, transgender, nonbinary, and other gender  
11 diverse individuals.

12 (b) "Reproductive health care services" means any medical  
13 services or treatments, including pharmaceutical and preventive care  
14 services or treatments, directly involved in the reproductive system  
15 and its processes, functions, and organs involved in reproduction.

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