

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE HOUSE BILL 1340

68th Legislature
2023 Regular Session

Passed by the House April 14, 2023
Yeas 57 Nays 39

**Speaker of the House of
Representatives**

Passed by the Senate April 6, 2023
Yeas 28 Nays 19

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Bernard Dean, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE HOUSE BILL 1340** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE HOUSE BILL 1340

AS AMENDED BY THE SENATE

Passed Legislature - 2023 Regular Session

State of Washington 68th Legislature 2023 Regular Session

By House Health Care & Wellness (originally sponsored by Representatives Riccelli, Thai, Berry, Ormsby, Chopp, Macri, Bergquist, Bateman, Simmons, Stonier, Berg, Duerr, Wylie, Senn, Taylor, Fitzgibbon, Cortes, Goodman, Reed, Lekanoff, Alvarado, Ramel, Kloba, Tharinger, and Pollet)

READ FIRST TIME 01/31/23.

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; adding a new section to chapter 18.130 RCW; and declaring
6 an emergency.

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

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

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

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

16 (b) Has committed any act defined as unprofessional conduct for a
17 license holder under RCW 18.130.180, except as provided in RCW
18 9.97.020 and section 3 of this act;

19 (c) Has been convicted or is subject to current prosecution or
20 pending charges of a crime involving moral turpitude or a crime
21 identified in RCW 43.43.830, except as provided in RCW 9.97.020,

1 18.205.097, and 18.19.095. For purposes of this section, conviction
2 includes all instances in which a plea of guilty or nolo contendere
3 is the basis for the conviction and all proceedings in which the
4 prosecution or sentence has been deferred or suspended. At the
5 request of an applicant for an original license whose conviction is
6 under appeal, the disciplining authority may defer decision upon the
7 application during the pendency of such a prosecution or appeal;

8 (d) Fails to prove that he or she is qualified in accordance with
9 the provisions of this chapter, the chapters identified in RCW
10 18.130.040(2), or the rules adopted by the disciplining authority; or

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

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

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

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

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

38 (4) A license applicant who is aggrieved by the decision to deny
39 the license or grant the license with conditions has the right to an
40 adjudicative proceeding. The application for adjudicative proceeding

1 must be in writing, state the basis for contesting the adverse
2 action, include a copy of the adverse notice, and be served on and
3 received by the department within twenty-eight days of the decision.
4 The license applicant has the burden to establish, by a preponderance
5 of evidence, that the license applicant is qualified in accordance
6 with the provisions of this chapter, the chapters identified in RCW
7 18.130.040(2), and the rules adopted by the disciplining authority.

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

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

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

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

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

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

37 (5) Suspension, revocation, or restriction of the individual's
38 license to practice any health care profession by competent authority
39 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 ~~criminal 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
14 consistent with the standard of care in Washington by a license
15 holder;

16 (b) The provision of, authorization of, recommendation of, aiding
17 in, assistance in, referral for, or other participation in any
18 reproductive health care services or gender affirming treatment, by a
19 license holder, if the participation would have been lawful and
20 consistent with standards of care if it occurred entirely in
21 Washington;

22 (c) A conviction or disciplinary action based on the license
23 holder's violation of another state's laws prohibiting the provision
24 of, authorization of, recommendation of, aiding in, assistance in,
25 referral for, or other participation in any reproductive health care
26 services or gender affirming treatment, if the participation would
27 have been lawful and consistent with standards of care if it occurred
28 entirely in Washington.

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

34 (a) The provision of, authorization of, recommendation of, aiding
35 in, assistance in, referral for, or other participation in any
36 reproductive health care services or gender affirming treatment, by a
37 license holder, if the participation would have been lawful and
38 consistent with standards of care if it occurred entirely in
39 Washington;

1 (b) A conviction or disciplinary action based on the license
2 holder's violation of another state's laws prohibiting the provision
3 of, authorization of, recommendation of, aiding in, assistance in,
4 referral for, or other participation in any reproductive health care
5 services or gender affirming treatment, if the participation would
6 have been lawful and consistent with standards of care if it occurred
7 entirely in Washington.

8 (3) Nothing in this section prohibits the disciplining authority
9 from taking action on separate charges that are unrelated to the
10 provision of, authorization of, recommendation of, aiding in,
11 assistance in, referral for, or other participation in any
12 reproductive health care services or gender affirming treatment that
13 would have been lawful and consistent with standards of care if it
14 occurred entirely in Washington.

15 (4) Nothing in this section shall be construed to expand the
16 scope of practice of any license holder licensed under this title,
17 nor does this section give any such license holder the authority to
18 act outside their scope of practice as defined under this title.

19 (5) For the purposes of this section the following definitions
20 apply:

21 (a) "Gender affirming treatment" means a service or product that
22 a health care provider, as defined in RCW 70.02.010, provides to an
23 individual to support and affirm the individual's gender identity.
24 "Gender affirming treatment" includes, but is not limited to,
25 treatment for gender dysphoria. "Gender affirming treatment" can be
26 provided to two spirit, transgender, nonbinary, and other gender
27 diverse individuals.

28 (b) "Reproductive health care services" means any medical
29 services or treatments, including pharmaceutical and preventive care
30 services or treatments, directly involved in the reproductive system
31 and its processes, functions, and organs involved in reproduction.

32 NEW SECTION. **Sec. 4.** This act is necessary for the immediate
33 preservation of the public peace, health, or safety, or support of
34 the state government and its existing public institutions, and takes
35 effect immediately.

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