
SENATE BILL 5776

State of Washington

62nd Legislature

2011 Regular Session

By Senator Chase

Read first time 02/11/11. Referred to Committee on Judiciary.

1 AN ACT Relating to requiring informed consent prior to the
2 administration of any drug when the patient has a known allergy to that
3 drug or that family of drugs; and amending RCW 7.70.050 and 18.130.180.

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

5 **Sec. 1.** RCW 7.70.050 and 1975-'76 2nd ex.s. c 56 s 10 are each
6 amended to read as follows:

7 (1) The following shall be necessary elements of proof that injury
8 resulted from health care in a civil negligence case or arbitration
9 involving the issue of the alleged breach of the duty to secure an
10 informed consent by a patient or his or her representatives against a
11 health care provider:

12 (a) That the health care provider failed to inform the patient of
13 a material fact or facts relating to the treatment including, but
14 limited to:

15 (i) That the treatment involves the administration of a drug or a
16 family of drugs to which the patient has a known allergy; and

17 (ii) That there are negative outcomes, about which the provider
18 knows or should know, associated with the interaction of the drug with
19 another drug the patient is known to be taking;

1 (b) That the patient consented to the treatment without being aware
2 of or fully informed of such material fact or facts;

3 (c) That a reasonably prudent patient under similar circumstances
4 would not have consented to the treatment if informed of such material
5 fact or facts;

6 (d) That the treatment in question proximately caused injury to the
7 patient.

8 (2) Under the provisions of this section a fact is defined as or
9 considered to be a material fact, if a reasonably prudent person in the
10 position of the patient or his or her representative would attach
11 significance to it deciding whether or not to submit to the proposed
12 treatment.

13 (3) Material facts under the provisions of this section which must
14 be established by expert testimony shall be either:

15 (a) The nature and character of the treatment proposed and
16 administered;

17 (b) The anticipated results of the treatment proposed and
18 administered;

19 (c) The recognized possible alternative forms of treatment; or

20 (d) The recognized serious possible risks, complications, and
21 anticipated benefits involved in the treatment administered and in the
22 recognized possible alternative forms of treatment, including
23 nontreatment.

24 (4) If a recognized health care emergency exists and the patient is
25 not legally competent to give an informed consent and/or a person
26 legally authorized to consent on behalf of the patient is not readily
27 available, his or her consent to required treatment will be implied.

28 **Sec. 2.** RCW 18.130.180 and 2010 c 9 s 5 are each amended to read
29 as follows:

30 The following conduct, acts, or conditions constitute
31 unprofessional conduct for any license holder under the jurisdiction of
32 this chapter:

33 (1) The commission of any act involving moral turpitude,
34 dishonesty, or corruption relating to the practice of the person's
35 profession, whether the act constitutes a crime or not. If the act
36 constitutes a crime, conviction in a criminal proceeding is not a
37 condition precedent to disciplinary action. Upon such a conviction,

1 however, the judgment and sentence is conclusive evidence at the
2 ensuing disciplinary hearing of the guilt of the license holder of the
3 crime described in the indictment or information, and of the person's
4 violation of the statute on which it is based. For the purposes of
5 this section, conviction includes all instances in which a plea of
6 guilty or nolo contendere is the basis for the conviction and all
7 proceedings in which the sentence has been deferred or suspended.
8 Nothing in this section abrogates rights guaranteed under chapter 9.96A
9 RCW;

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

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

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

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

24 (6) Except when authorized by RCW 18.130.345, the possession, use,
25 prescription for use, or distribution of controlled substances or
26 legend drugs in any way other than for legitimate or therapeutic
27 purposes, diversion of controlled substances or legend drugs, the
28 violation of any drug law, or prescribing controlled substances for
29 oneself;

30 (7) Violation of any state or federal statute or administrative
31 rule regulating the profession in question, including any statute or
32 rule defining or establishing standards of patient care or professional
33 conduct or practice;

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

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

36 (b) Not furnishing in writing a full and complete explanation
37 covering the matter contained in the complaint filed with the
38 disciplining authority;

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

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

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

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

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

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

15 (13) Misrepresentation or fraud in any aspect of the conduct of the
16 business or profession;

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

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

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

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

30 (18) The procuring, or aiding or abetting in procuring, a criminal
31 abortion;

32 (19) The offering, undertaking, or agreeing to cure or treat
33 disease by a secret method, procedure, treatment, or medicine, or the
34 treating, operating, or prescribing for any health condition by a
35 method, means, or procedure which the licensee refuses to divulge upon
36 demand of the disciplining authority;

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

- 1 (21) Violation of chapter 19.68 RCW;
- 2 (22) Interference with an investigation or disciplinary proceeding
3 by willful misrepresentation of facts before the disciplining authority
4 or its authorized representative, or by the use of threats or
5 harassment against any patient or witness to prevent them from
6 providing evidence in a disciplinary proceeding or any other legal
7 action, or by the use of financial inducements to any patient or
8 witness to prevent or attempt to prevent him or her from providing
9 evidence in a disciplinary proceeding;
- 10 (23) Current misuse of:
- 11 (a) Alcohol;
- 12 (b) Controlled substances; or
- 13 (c) Legend drugs;
- 14 (24) Abuse of a client or patient or sexual contact with a client
15 or patient;
- 16 (25) Acceptance of more than a nominal gratuity, hospitality, or
17 subsidy offered by a representative or vendor of medical or health-
18 related products or services intended for patients, in contemplation of
19 a sale or for use in research publishable in professional journals,
20 where a conflict of interest is presented, as defined by rules of the
21 disciplining authority, in consultation with the department, based on
22 recognized professional ethical standards;
- 23 (26) Failure to obtain written informed consent prior to the
24 administration of any drug when the patient has a known allergy to that
25 drug or that family of drugs or when there are negative outcomes, about
26 which the license holder knows or should know, associated with the
27 interaction of the drug with another drug the patient is known to be
28 taking, regardless of whether the administration of the drug results in
29 injury and regardless of whether the failure to obtain written informed
30 consent constitutes a breach of the duty to secure an informed consent
31 under RCW 7.70.050. This subsection does not apply if: (a) A
32 recognized health care emergency exists; (b) the patient is not legally
33 competent to give an informed consent; and (c) a person legally
34 authorized to consent on behalf of the patient is not readily
35 available.

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