

CHAPTER 202.

[H. B. 365.]

MEDICAL DISCIPLINARY BOARD ACT.

AN ACT relating to and regulating the conduct and discipline of doctors practicing medicine and surgery, and the revocation, suspension, and refusal of licenses to practice medicine and surgery, to be known as the "medical disciplinary board act"; creating the medical disciplinary board and defining its duties and powers; establishing procedure for the conduct of hearings by the board; empowering the board to issue certificates or orders of revocation and suspension, and statements of grounds for refusal, of licenses to practice medicine or surgery; providing for judicial review; providing for payment of expenses and per diem salary; making an appropriation; amending section 1, chapter 166, Laws of 1941 and RCW 18.71.040 and 18.71.080, and section 7, chapter 134, Laws of 1919, and section 12, chapter 192, Laws of 1909 and RCW 18.71.120 through 18.71.180, and repealing section 1, chapter 65, Laws of 1915 and RCW 18.71.110, and section 13, chapter 192, Laws of 1909; and providing penalties.

Be it enacted by the Legislature of the State of Washington:

SECTION 1. This act is passed:

- (1) In the exercise of the police power of the state to protect public health, to promote the welfare of the state, and to provide an adequate public agency to act as a disciplinary body for the members of the medical profession licensed to practice medicine and surgery in this state; Purpose.
- (2) Because the health and well-being of the people of this state are of paramount importance;
- (3) Because the conduct of members of the medical profession licensed to practice medicine and surgery in this state plays a vital role in preserving the health and well-being of the people of the state; and
- (4) Because the agency which now exists to handle disciplinary proceedings for members of the medical profession licensed to practice medicine and surgery in this state is ineffective and very infre-

quently employed, and consequently there is no effective means of handling such disciplinary proceedings when they are necessary for the protection of the public health.

SEC. 2. Terms used in this act shall have the meaning set forth in this section unless the context clearly indicates otherwise:

"Board,"
defined.

(1) "Board" means the medical disciplinary board.

"License,"
defined.

(2) "License" means a certificate or license to practice medicine and surgery in this state as provided for in RCW 18.71.010 and 18.71.050.

"Members,"
defined.

(3) "Members" means members of the medical disciplinary board.

"Secretary,"
defined.

(4) "Secretary" means the secretary of the medical disciplinary board.

Elements of
"Unprofessional
conduct."

SEC. 3. The term "Unprofessional conduct" as used in this act shall mean the following items or any one or combination thereof:

Moral
turpitude.

(1) Conviction in any court of any offense involving moral turpitude, in which case the record of such conviction shall be conclusive evidence;

Criminal
abortion.

(2) The procuring, or aiding or abetting in procuring a criminal abortion;

Fraud in ob-
taining license.

(3) Fraud or deceit in the obtaining of a license to practice medicine;

Deceptive
advertising.

(4) All advertising of medical business which is intended or has a tendency to deceive the public or impose upon credulous or ignorant persons and so be harmful or injurious to public morals or safety;

(5) All advertising of any medicine or of any means whereby the monthly period of women can be regulated or the menses reestablished if suppressed;

Personation.

(6) The personation of another licensed practitioner;

Intemperance.

(7) Habitual intemperance;

Drugs.

(8) The use or prescription for use of narcotic

drugs in any way other than for therapeutic purposes;

(9) The offering, undertaking or agreeing to cure or treat disease by a secret method, procedure, treatment, or medicine, or the treating, operating, or prescribing for any human condition by a method, means, or procedure which the licensee refuses to divulge upon demand of the board;

Secret treatment.

(10) The wilful betrayal of a professional secret;

Professional secret.

(11) Repeated acts of immorality, or repeated acts of gross misconduct in the practice of the profession;

Immoral acts.

Gross misconduct.

(12) Unprofessional conduct as defined in chapter 19.68 RCW;

(13) Aiding or abetting an unlicensed person to practice medicine; or

Aiding unlicensed person.

(14) Declaration of mental incompetency by a court of competent jurisdiction.

Mental incompetency.

SEC. 4. There is hereby created the "Washington state medical disciplinary board," which shall be composed of one holder of a valid license to practice medicine and surgery from each congressional district now existing or hereafter created in the state. The board shall be an administrative agency of the state of Washington. The attorney general shall be the advisor of the board and shall represent it in all legal proceedings.

"Washington state medical disciplinary board."

Attorney general, advisor.

SEC. 5. Members of the board shall be elected by secret mail ballot by the holders of licenses to practice medicine and surgery residing in each congressional district and shall hold office until their successors are elected and qualified. Members from even-numbered congressional districts shall be elected in even-numbered years and members from odd-numbered congressional districts shall be elected in odd-numbered years.

Election of board members.

Nominations
to board.

SEC. 6. Nominations to the board may be made by petition signed by not less than twenty-five license holders residing in the nominee's district, and shall be submitted to the board at least four weeks prior to the date of the election. Votes cast for license holders not so nominated shall be valid.

Election date.

SEC. 7. The election shall be held in September and shall be conducted in accordance with rules and regulations adopted by the board under the rule-making power hereinafter provided for. Terms of office of members shall commence on October 1st.

Commence-
ment of
terms.

Vacancies
filled by
governor.

SEC. 8. Vacancies in the board shall be filled by the governor and a member appointed to fill a vacancy on the board shall serve until the naming of his successor in the next district election and until his successor takes office on the October 1st following the election.

Removal by
governor.

SEC. 9. Any member of the board may be removed by the governor for neglect of duty, misconduct or malfeasance or misfeasance in office, after being given a written statement of the charges against him and sufficient opportunity to be heard thereon.

Payment to
board
members.

SEC. 10. Members of the board shall be paid twenty-five dollars per diem for time spent in performing their duties as members of the board and shall be repaid their necessary traveling and other expenses while engaged in business of the board, with such per diem and reimbursement for expenses to be paid out of the general fund on vouchers approved by the director of licenses: *Provided*, That the amount for expense will not be more than fifteen dollars per day, except for traveling expense which shall not be more than eight cents per mile.

SEC. 11. The board may meet, function, and exercise its powers at any place within the state.

Organization
of first board.

SEC. 12. The first board shall be organized in this manner: Within ten days after the effective date of

this act the director of licenses shall appoint five holders of licenses to practice medicine and surgery in this state to serve as members of a temporary commission which shall, within ninety days thereafter, organize and hold the election to name the first members of the medical disciplinary board. The temporary commission shall adopt such rules and regulations as it deems necessary to govern the holding of the first election. After the election is completed and the first members of the board have qualified and taken office, the temporary commission shall be abolished and all of its records shall be turned over to the board.

Temporary
commission.

Temporary
commission
abolished.

SEC. 13. The board shall elect from its members a chairman, vice-chairman, and secretary, who shall serve for one year and until their successors are elected and qualified. The board shall meet at least once a year or oftener upon the call of the chairman at such times and places as the chairman shall designate. Five members shall constitute a quorum to transact business.

Board officers,
terms and
meetings.

SEC. 14. Members of the board shall be immune from suit in any action, civil or criminal, based upon any disciplinary proceedings or other official acts performed in good faith as members of such board.

Immunity.

SEC. 15. The board shall have the following powers and duties:

Board powers
and duties.

(1) To adopt, amend and rescind such rules and regulations as it deems necessary to carry out the provisions of this act;

(2) To investigate all complaints and charges of unprofessional conduct against any holder of a license and to hold hearings to determine whether such charges are substantiated or unsubstantiated;

(3) To employ necessary stenographic or clerical help;

(4) To issue subpoenas and administer oaths in connection with any investigation, hearing, or disciplinary proceeding held under this act.

(5) To take or cause depositions to be taken as needed in any investigation, hearing, or proceeding.

Complaint charging unprofessional conduct.

SEC. 16. Any person, firm, corporation, or public officer may submit a written complaint to the secretary charging the holder of a license to practice medicine and surgery with unprofessional conduct, specifying the grounds therefor. If the board determines that such complaint merits consideration, or if the board shall have reason to believe, without a formal complaint, that any holder of a license has been guilty of unprofessional conduct, the chairman shall designate three members to serve as a committee to hear and report upon such charges.

Hearing committee.

Specification of charges.

SEC. 17. When a hearing committee is named, the secretary shall prepare a specification of the charge or charges of unprofessional conduct made against a license holder, a copy of which shall be served upon the accused, together with a notice of the hearing, as provided in section 19 of this act.

Notice of hearing.

Time of hearing.

Notice of hearing.

SEC. 18. The time of hearing shall be fixed by the secretary as soon as convenient, but not earlier than thirty days after service of the charges upon the accused. The secretary shall issue a notice of hearing of the charges, which notice shall specify the time and place of hearing and shall notify the accused that he may file with the secretary a written response within twenty days of the date of service. Such notice shall also notify the accused that a stenographic record of the proceeding will be kept, that he will have the opportunity to appear personally and to have counsel present, with the right to produce witnesses and evidence in his own behalf, to cross-examine witnesses testifying against him, to examine witnesses testifying for him, to examine

Stenographic record.

Rights of accused.

such documentary evidence as may be produced against him, and to have subpoenas issued by the board.

SEC. 19. Subpoenas issued by the board to compel the attendance of witnesses at any investigation or hearing shall be served in accordance with the provisions of chapter 5.56 RCW, governing the service of subpoenas in court actions. The board shall issue subpoenas at the request and on the behalf of the accused. In case any person contumaciously refuses to obey a subpoena issued by the board or to answer any proper question put to him during the hearing or proceeding, the superior court of any county in which the proceeding is carried on or in which the person guilty of refusal to obey the subpoena or to answer the question resides or is found shall have jurisdiction, upon application by the board, to issue to such person an order requiring him to appear before the board or its hearing committee, there to produce evidence if so ordered, or there to give testimony concerning the matter under investigation or question. Any failure to obey such order of the court may be punished by the court as a civil contempt may be punished.

Issuance of and service of subpoenas.

Refusal to obey subpoena.

SEC. 20. Within a reasonable time after holding a hearing under the provisions of sections 18 and 19 of this act, the committee shall make a written report of its findings of fact and its recommendations, and the same shall be forthwith transmitted to the secretary, with a transcript of the evidence.

Report of findings.

SEC. 21. If the board deems it necessary, the board may, after further notice to the accused, take further testimony at a second hearing before the full board, conducted as provided for hearings before the three man hearing committee.

Second hearing.

SEC. 22. In any event, whether the board makes its determination on the findings of the hearing com-

Board determines charge.

mittee or on the findings of the committee as supplemented by a second hearing before the board, the board shall determine the charge or charges upon the merits on the basis of the evidence in the record before it.

Order of revocation.

Reprimand.

SEC. 23. If a majority of the members of the board then sitting vote in favor of finding the accused guilty of unprofessional conduct as specified in the charges, or any of them, the board shall prepare written findings of fact and may thereafter prepare and file in the office of the director of licenses a certificate or order of revocation or suspension, in which case a copy thereof shall be served upon the accused, or the board may reprimand the accused, as it deems most appropriate.

Order of dismissal.

SEC. 24. If the license holder is found not guilty, or if less than a majority of the members then sitting vote for a finding of guilty, the board shall forthwith order a dismissal of the charges and the exoneration of the accused. When a proceeding has been dismissed, either on the merits or otherwise, the board shall relieve the accused from any possible odium that may attach by reason of the charges made against him by such public exoneration as is necessary, if requested by the accused to do so.

Filing order of revocation or suspension.

SEC. 25. The filing by the board in the office of the director of licenses of a certificate or order of revocation or suspension after due notice, hearing and findings in accordance with the procedure specified in this act, certifying that any holder of a license has been found guilty of unprofessional conduct by the board, shall constitute a revocation or suspension of the license to practice medicine and surgery in this state in accordance with the terms and conditions imposed by the board and embodied in the certificate or order of revocation or suspension: *Provided*, That if the licensee seeks judicial

review of the board's decision pursuant to the provisions of this act, such revocation or the period of such suspension shall be stayed and shall not be effective or commence to run until final judgment has been entered in any proceeding instituted under the provisions of this act and the licensee's judicial remedies exhausted hereunder.

Revocation or suspension stayed.

SEC. 26. The certificate or order of revocation or suspension shall contain a brief and concise statement of the ground or grounds upon which the certificate or order is based and the specific terms and conditions of such revocation or suspension, and shall be retained as a permanent record by the director of licenses.

Contents of order of revocation.

SEC. 27. The director of licenses shall not issue any license or any renewal thereof to any person whose license has been revoked or suspended by the board except in conformity with the terms and conditions of the certificate or order of revocation or suspension, or in conformity with any order of reinstatement issued by the board, or in accordance with the final judgment in any proceeding for review instituted under the provisions of this act.

License after revocation or suspension.

SEC. 28. Any person whose license has been revoked or suspended by the board shall have the right to a judicial review of the board's decision. Such review shall be initiated by serving on the secretary a notice of appeal and filing such notice of appeal either in the superior court of Thurston county, or in the superior court of the county in which the appellant resides, within thirty days after the filing of the certificate or order of revocation or suspension in the office of the director of licenses.

Judicial review initiated.

SEC. 29. The secretary shall, within twenty days after the service of the notice of appeal, transmit to the clerk of the superior court to which the appeal is taken a transcript of the record before the board,

Transmit certified transcript.

certified under the seal of the board, together with a certified copy of the board's written findings.

Board findings conclusive.

Limitation on review.

SEC. 30. The findings of the board, if supported by the preponderance of evidence, shall be final and conclusive. The review in the superior court shall be limited to determining whether the findings of the board are supported by the preponderance of evidence and whether the proceedings of the board were erroneous as a matter of law, or in violation of due process, or so arbitrary or capricious as to amount to an abuse of discretion, or contrary to any constitutional right, power, privilege or immunity.

Procedure governing appeals.

SEC. 31. The procedure governing appeals to the superior court under Title 51 RCW, as amended from time to time, shall govern in matters of appeal from a decision of the board, insofar as applicable and to the extent such procedure is not inconsistent with the type of review provided in this act.

SEC. 32. Appeal shall be from the decision of the superior court.

Judicial review though failure to file order of revocation.

SEC. 33. If the board finds the holder of any license guilty of unprofessional conduct and fails to file a certificate or order of revocation or suspension in the office of the director of licenses within thirty days, the license holder shall have the right to a judicial review of such finding of the board in the same manner and to the same extent as if the certificate or order had been filed.

Division and amendment.

SEC. 34. Section 1, chapter 166, Laws of 1941, (heretofore codified as RCW 18.71.040 and 18.71.080) is divided and amended as set forth in sections 35 and 36 of this act.

Enacted without amendment.

SEC. 35. (RCW 18.71.040) Every applicant for a certificate to practice medicine and surgery shall pay a fee of twenty-five dollars.

Annual registration.

SEC. 36. (RCW 18.71.080) Every person licensed to practice medicine and surgery in this state shall

register with the director of licenses annually, and pay an annual renewal registration fee of seven dollars, on or before the first day of July of each year, and thereupon the license of such person shall be renewed for a period of one year. Any failure to register and pay the annual renewal registration fee shall render the license invalid, but such license shall be reinstated upon written application therefor to the director, and payment to the state of a penalty of ten dollars, together with all delinquent annual license renewal fees.

Renewal registration fee.

Penalty.

SEC. 37. Section 7, chapter 134, Laws of 1919 and section 12, chapter 192, Laws of 1909, (heretofore divided, combined, and codified as RCW 18.71.120 through 18.71.180) are amended to read as set forth in sections 38 through 44 of this act.

Amendment.

SEC. 38. (RCW 18.71.120) The director must refuse a certificate to any applicant guilty of unprofessional conduct: *Provided*, That any person whose license has been suspended or revoked under the provisions of this act may apply to the board for reinstatement at any time and the board may hold hearings on any such petition and may order reinstatement and impose terms and conditions thereof and issue a certificate of reinstatement to the director of licenses.

Application for reinstatement.

SEC. 39. (RCW 18.71.130)

SEC. 40. (RCW 18.71.140) Before refusal of a license upon the ground of unprofessional conduct a hearing must be had before the medical disciplinary board. Such hearing shall be governed by the procedure set forth in the medical disciplinary board act and the applicant shall have all the rights accorded to an accused license holder under such act, including the right to appeal from an adverse decision.

Hearing.

SEC. 41. (RCW 18.71.150)

SEC. 42. (RCW 18.71.160)

SEC. 43. (RCW 18.71.170)

Statement. SEC. 44. (RCW 18.71.180) In case of the refusal of a license, the medical disciplinary board shall file a brief and concise statement of the grounds and reasons therefor in the office of the director of licenses, which, together with the decision of the hearing committee of the medical disciplinary board, in writing, shall remain of record therein.

Appropriation. SEC. 45. There is appropriated from the general fund the sum of fifteen thousand dollars, or so much thereof as shall be necessary, for the purpose of carrying into effect and administering the provisions of this medical disciplinary board act during the biennium ending June 30, 1957.

Invalidity. SEC. 46. If any section, sentence, clause or phrase of this act should be held invalid or unconstitutional, the invalidity or unconstitutionality thereof shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this medical disciplinary board act.

Repeal. SEC. 47. Section 1, chapter 65, Laws of 1915 and RCW 18.71.110, and section 13, chapter 192, Laws of 1909 are each repealed.

"Medical disciplinary board act." SEC. 48. This act may be known, as cited, as the "medical disciplinary board act".

Passed the House February 26, 1955.

Passed the Senate March 6, 1955.

Approved by the Governor March 16, 1955.