

CHAPTER 300

[Engrossed Substitute House Bill No. 1950]
 MEDICAL MALPRACTICE

AN ACT Relating to medical malpractice; amending RCW 18.72.040 and 18.72.155; adding new sections to chapter 18.57 RCW; adding new sections to chapter 18.72 RCW; adding new sections to chapter 70.41 RCW; creating a new section; and prescribing penalties.

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

NEW SECTION. Sec. 1. (1) The legislature finds that medical malpractice will be reduced if hospitals establish coordinated medical malpractice prevention programs and provide greater scrutiny of physicians prior to granting or renewing hospital privileges.

(2) The legislature also finds that physician disciplinary boards can reduce medical malpractice if they have access to additional information on health care providers who are incompetent or impaired.

PART I

MEDICAL DISCIPLINARY BOARD

*Sec. 2. Section 4, chapter 202, Laws of 1955 as amended by section 1, chapter 71, Laws of 1977 and RCW 18.72.040 are each amended to read as follows:

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 and ~~((one))~~ three members of the public who meet~~((s))~~ the qualifications contained in RCW 70.39.020(2) shall be appointed by the governor. The public ~~((member's))~~ members' term shall be for ~~((two))~~ four years ~~((commencing on October 1st of each odd-numbered year))~~. In order to achieve staggered terms, the public member serving on the board on the effective date of this 1986 act shall continue to serve until October 1, 1987. The remaining two public members shall be appointed to initial terms of three years and four years, respectively.

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. Assistant attorneys general assigned to the board are subject to the approval of the board and shall work under the direct control of the board while so assigned.

*Sec. 2 was partially vetoed, see message at end of chapter.

*Sec. 3. Section 6, chapter 111, Laws of 1979 ex. sess. and RCW 18.72.155 are each amended to read as follows:

The director of the department of licensing shall appoint, from a list of three names supplied by the board, an executive secretary who shall act to carry out the provisions of this chapter. The director shall also employ such

additional staff including administrative assistants, investigators, and clerical staff as are required to enable the board to accomplish its duties and responsibilities. Investigators employed under this section shall be assigned solely to the board and are subject to the approval of the board. The executive secretary shall be exempt from the provisions of the civil service law, chapter 41-.06 RCW, as now or hereafter amended.

*Sec. 3 was vetoed, see message at end of chapter.

PART II

MEDICAL MALPRACTICE PREVENTION PROGRAM

NEW SECTION. Sec. 4. A new section is added to chapter 70.41 RCW to read as follows:

(1) Every hospital shall maintain a coordinated program for the identification and prevention of medical malpractice. The program shall include at least the following:

(a) The establishment of a quality assurance committee with the responsibility to review the services rendered in the hospital in order to improve the quality of medical care of patients and to prevent medical malpractice. The committee shall oversee and coordinate the medical malpractice prevention program and shall insure that information gathered pursuant to the program is used to review and to revise hospital policies and procedures. At least one member of the committee shall be a member of the governing board of the hospital who is not otherwise affiliated with the hospital in an employment or contractual capacity;

(b) A medical staff privileges sanction procedure through which credentials, physical and mental capacity, and competence in delivering health care services are periodically reviewed as part of an evaluation of staff privileges;

(c) The periodic review of the credentials, physical and mental capacity, and competence in delivering health care services of all persons who are employed or associated with the hospital;

(d) A procedure for the prompt resolution of grievances by patients or their representatives related to accidents, injuries, treatment, and other events that may result in claims of medical malpractice;

(e) The maintenance and continuous collection of information concerning the hospital's experience with negative health care outcomes and incidents injurious to patients, patient grievances, professional liability premiums, settlements, awards, costs incurred by the hospital for patient injury prevention, and safety improvement activities;

(f) The maintenance of relevant and appropriate information gathered pursuant to (a) through (e) of this subsection concerning individual physicians within the physician's personnel or credential file maintained by the hospital;

(g) Education programs dealing with patient safety, injury prevention, staff responsibility to report professional misconduct, the legal aspects of patient care, improved communication with patients, and causes of malpractice claims for staff personnel engaged in patient care activities; and

(h) Policies to ensure compliance with the reporting requirements of this section.

(2) Any person who, in substantial good faith, provides information to further the purposes of the medical malpractice prevention program or who, in substantial good faith, participates on the quality assurance committee shall not be subject to an action for civil damages or other relief as a result of such activity.

(3) Information and documents, including complaints and incident reports, created, collected, and maintained about health care providers arising out of the matters that are subject to evaluation by a review committee conducting quality assurance reviews are not subject to discovery or introduction into evidence in any civil action, and no person who was in attendance at a meeting of such committee or board shall be permitted or required to testify in any civil action as to the content of such proceedings. This subsection does not preclude: (a) In any civil action, the testimony of any person concerning the facts which form the basis for the institution of such proceedings of which the person had personal knowledge acquired independently of such proceedings; (b) in any civil action by a health care provider regarding the restriction or revocation of that individual's clinical or staff privileges, introduction into evidence information collected and maintained by quality assurance committees regarding such health care provider; or (c) in any civil action, disclosure of the fact that staff privileges were terminated or restricted, including the specific restrictions imposed, if any.

(4) The department of social and health services shall adopt such rules as are deemed appropriate to effectuate the purposes of this section.

(5) The medical disciplinary board or the board of osteopathic medicine and surgery, as appropriate, may review and audit the records of committee decisions in which a physician's privileges are terminated or restricted. Each hospital shall produce and make accessible to the board the appropriate records and otherwise facilitate the review and audit. Information so gained shall not be subject to the discovery process and confidentiality shall be respected as required by subsection (3) of this section. Failure of a hospital to comply with this subsection is punishable by a civil penalty not to exceed two hundred fifty dollars.

(6) Violation of this section shall not be considered negligence per se.

NEW SECTION. Sec. 5. A new section is added to chapter 18.72 RCW to read as follows:

(1) A licensed health care professional licensed under chapter 18.71 RCW shall report to the medical disciplinary board when he or she has

personal knowledge that a practicing physician has either committed an act or acts which may constitute statutorily defined unprofessional conduct or that a practicing physician may be unable to practice medicine with reasonable skill and safety to patients by reason of illness, drunkenness, excessive use of drugs, narcotics, chemicals, or any other type of material, or as a result of any mental or physical conditions.

(2) Reporting under this section is not required by:

(a) An appropriately appointed peer review committee member of a licensed hospital or by an appropriately designated professional review committee member of a county or state medical society during the investigative phase of their respective operations if these investigations are completed in a timely manner; or

(b) A treating licensed health care professional of a physician currently involved in a treatment program as long as the physician patient actively participates in the treatment program and the physician patient's impairment does not constitute a clear and present danger to the public health, safety, or welfare.

(3) The medical disciplinary board may impose disciplinary sanctions, including license suspension or revocation, on any health care professional subject to the jurisdiction of the board who has failed to comply with this section.

NEW SECTION. Sec. 6. A new section is added to chapter 18.72 RCW to read as follows:

(1) Every institution or organization providing professional liability insurance to physicians shall send a complete report to the medical disciplinary board of all malpractice settlements, awards, or payments in excess of twenty thousand dollars as a result of a claim or action for damages alleged to have been caused by an insured physician's incompetency or negligence in the practice of medicine. Such institution or organization shall also report the award, settlement, or payment of three or more claims during a year as the result of the alleged physician's incompetence or negligence in the practice of medicine regardless of the dollar amount of the award or payment.

(2) Reports required by this section shall be made within sixty days of the date of the settlement or verdict. Failure to comply with this section is punishable by a civil penalty not to exceed two hundred fifty dollars.

NEW SECTION. Sec. 7. A new section is added to chapter 70.41 RCW to read as follows:

The chief administrator or executive officer of a hospital shall report to the board when a physician's clinical privileges are terminated or are restricted based on a determination, in accordance with an institution's by-laws, that a physician has either committed an act or acts which may constitute unprofessional conduct. The officer shall also report if a physician accepts voluntary termination in order to foreclose or terminate actual or

possible hospital action to suspend, restrict, or terminate a physician's clinical privileges. Such a report shall be made within sixty days of the date action was taken by the hospital's peer review committee or the physician's acceptance of voluntary termination or restriction of privileges. Failure of a hospital to comply with this section is punishable by a civil penalty not to exceed two hundred fifty dollars.

NEW SECTION. Sec. 8. A new section is added to chapter 70.41 RCW to read as follows:

Each hospital shall keep written records of decisions to restrict or terminate privileges of practitioners. Copies of such records shall be made available to the board within thirty days of a request and all information so gained shall remain confidential in accordance with sections 4 and 11 of this act and shall be protected from the discovery process. Failure of a hospital to comply with this section is punishable by civil penalty not to exceed two hundred fifty dollars.

NEW SECTION. Sec. 9. A new section is added to chapter 18.57 RCW to read as follows:

A health care professional licensed under chapter 18.57 RCW shall report to the board when he or she has personal knowledge that a practicing osteopathic physician has either committed an act or acts which may constitute statutorily defined unprofessional conduct or that a practicing osteopathic physician may be unable to practice osteopathic medicine with reasonable skill and safety to patients by reason of illness, drunkenness, excessive use of drugs, narcotics, chemicals, or any other type of material, or as a result of any impairing mental or physical conditions.

(2) Reporting under this section is not required by:

(a) An appropriately appointed peer review committee member of a licensed hospital or by an appropriately designated professional review committee member of an osteopathic medical society during the investigative phase of their respective operations if these investigations are completed in a timely manner; or

(b) A treating licensed health care professional of an osteopathic physician currently involved in a treatment program as long as the physician patient actively participates in the treatment program and the physician patient's impairment does not constitute a clear and present danger to the public health, safety, or welfare.

(3) The board may impose disciplinary sanctions, including license suspension or revocation, on any health care professional subject to the jurisdiction of the board who has failed to comply with this section.

NEW SECTION. Sec. 10. A new section is added to chapter 18.57 RCW to read as follows:

Every institution or organization providing professional liability insurance to osteopathic physicians shall send a complete report to the board of

all malpractice settlements, awards, or payments in excess of twenty thousand dollars as a result of a claim or action for damages alleged to have been caused by an insured physician's incompetency or negligence in the practice of osteopathic medicine. Such institution or organization shall also report the award, settlement, or payment of three or more claims during a year as the result of the alleged physician's incompetence or negligence in the practice of medicine regardless of the dollar amount of the award or payment.

Reports required by this section shall be made within sixty days of the date of the settlement or verdict. Failure to comply with this section is punishable by a civil penalty not to exceed two hundred fifty dollars.

PART III

GRANT OR RENEWAL OF HOSPITAL PRIVILEGES

NEW SECTION. Sec. 11. A new section is added to chapter 70.41 RCW to read as follows:

(1) Prior to granting or renewing clinical privileges or association of any physician or hiring a physician, a hospital or facility approved pursuant to this chapter shall request from the physician and the physician shall provide the following information:

(a) The name of any hospital or facility with or at which the physician had or has any association, employment, privileges, or practice;

(b) If such association, employment, privilege, or practice was discontinued, the reasons for its discontinuation;

(c) Any pending professional medical misconduct proceedings or any pending medical malpractice actions in this state or another state, the substance of the allegations in the proceedings or actions, and any additional information concerning the proceedings or actions as the physician deems appropriate;

(d) The substance of the findings in the actions or proceedings and any additional information concerning the actions or proceedings as the physician deems appropriate;

(e) A waiver by the physician of any confidentiality provisions concerning the information required to be provided to hospitals pursuant to this subsection; and

(f) A verification by the physician that the information provided by the physician is accurate and complete.

(2) Prior to granting privileges or association to any physician or hiring a physician, a hospital or facility approved pursuant to this chapter shall request from any hospital with or at which the physician had or has privileges, was associated, or was employed, the following information concerning the physician:

(a) Any pending professional medical misconduct proceedings or any pending medical malpractice actions, in this state or another state;

(b) Any judgment or settlement of a medical malpractice action and any finding of professional misconduct in this state or another state by a licensing or disciplinary board; and

(c) Any information required to be reported by hospitals pursuant to RCW 18.72.265.

(3) The medical disciplinary board shall be advised within thirty days of the name of any physician denied staff privileges, association, or employment on the basis of adverse findings under subsection (1) of this section.

(4) A hospital or facility that receives a request for information from another hospital or facility pursuant to subsections (1) and (2) of this section shall provide such information concerning the physician in question to the extent such information is known to the hospital or facility receiving such a request, including the reasons for suspension, termination, or curtailment of employment or privileges at the hospital or facility. A hospital, facility, or other person providing such information in good faith is not liable in any civil action for the release of such information.

(5) Information and documents, including complaints and incident reports, created, collected, and maintained about health care providers arising out of the matters that are subject to evaluation by a review committee conducting quality assurance reviews are not subject to discovery or introduction into evidence in any civil action, and no person who was in attendance at a meeting of such committee or board shall be permitted or required to testify in any civil action as to the content of such proceedings. This subsection does not preclude: (a) In any civil action, the testimony of any person concerning the facts which form the basis for the institution of such proceedings of which the person had personal knowledge acquired independently of such proceedings; (b) in any civil action by a health care provider regarding the restriction or revocation of that individual's clinical or staff privileges, introduction into evidence information collected and maintained by quality assurance committees regarding such health care provider; or (c) in any civil action, disclosure of the fact that staff privileges were terminated or restricted, including the specific restrictions imposed, if any.

(6) Hospitals shall be granted access to information held by the medical disciplinary board and the board of osteopathic medicine and surgery pertinent to decisions of the hospital regarding credentialing and recredentialing of practitioners.

(7) Violation of this section shall not be considered negligence per se.

NEW SECTION. Sec. 12. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or

the application of the provision to other persons or circumstances is not affected.

Passed the House March 9, 1986.

Passed the Senate March 7, 1986.

Approved by the Governor April 4, 1986, with the exception of certain items which were vetoed.

Filed in Office of Secretary of State April 4, 1986.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to certain portions, Substitute House Bill No. 1950, entitled:

"AN ACT Relating to medical malpractice."

The last sentence of section 2 would require Assistant Attorneys General assigned to the Medical Disciplinary Board to be subject to Board approval and to work under the Board's control. Section 3 would require investigators to be assigned solely to the Board and to be subject to the Board's approval. Both provisions are being vetoed.

Designation and supervision of full-time staff is not the duty of a part-time board. It is better performed by the staff of the administrative agency, in this case the Department of Licensing. If staffing problems arise, the Board should be able to work them out with the support agency, as a number of other boards presently do. One of the benefits of having a part-time board staffed by a larger administrative agency is that the agency can adjust workloads and tasks so that employees are efficiently utilized. To assign attorneys and investigators to only one board could result in inefficiencies and would prevent pooling of valuable personnel resources.

For these reasons I have vetoed the last sentence of section 2 and all of section 3. The remainder of the bill is approved."

CHAPTER 301

[Engrossed Substitute House Bill No. 1598]

SEXUAL OFFENDERS

AN ACT Relating to sexual offenders; amending RCW 9.94A.120; creating new sections; repealing RCW 9.94A.122; providing an effective date; and declaring an emergency.

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

NEW SECTION. Sec. 1. The legislature finds that the sexual offender treatment programs at western and eastern state hospitals, while not proven to be totally effective, may be of some benefit in positively affecting the behavior of certain sexual offenders. Given the significance of the problems of sexual assault and sexual abuse of children, it is therefore appropriate to review and revise these treatment efforts.

At the same time, concerns regarding the lack of adequate security at the existing programs must be satisfactorily addressed. In an effort to promote public safety, it is the intent of the legislature to transfer the responsibility for felony sexual offenders from the department of social and health services to the department of corrections.