Supreme Court No.
Court of Appeals No. 47727-1-II
Consolidated With Court of Appeals No. 47367-4-II

STATE OF WASHINGTON
SUPREME COURT

DALE E. ALSAGER, D.O., Ph.D.,

PETITIONER,

v.

BOARD OF OSTEOPATHIC MEDICINE AND SURGERY;
et al.,

RESPONDENTS.

DALE ALSAGER'S PETITION FOR DISCRETIONARY REVIEW
RAP 13.4(a)

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ORIGINAL

TABLE OF CONTENTS

Page

APPENDIX

TABLE OF AUTHORITIES

Page

Table of Cases

United States Constitution

U.S. Supreme Court

Washington State Constitution

Washington Court Cases

Other Jurisdictions

State Statutes

State Administrative Regulations

Court Rules

Other Authorities

I. PREFACE

The Court of Appeals just overruled 130 years of U.S. Supreme Court precedent and over 58 years of this Court's precedent by holding that a quasi-criminal action is actually but a civil action and the accused has no more constitutional rights than does a defendant in a civil case. The Court of Appeals has just challenged this Court to reverse it; and that's precisely what Dr Alsager respectfully asks of this Court. This Court must take this opportunity to make clear to all State agencies and lower courts the legal principles that this Court's (1) *Nguyen*[1] decision is not the *be-all* and *end-all* with respect to the constitutional protections accorded the accused in quasi-criminal professional license disciplinary actions where fundamental, independent rights and protections are afforded under U.S. Const., Amends. IV and V, and Wash. Const. art. I, §§ 7 and 9; and (2) holding that professional license disciplinary actions are *quasi-criminal* is legally significant and is not a mere talisman of no constitutional import as wrongly espoused by the Court of Appeals.

In what this Court clearly and has long held to be a quasi-criminal professional license disciplinary action,[2] the Board of Osteopathic Medicine and Surgery (Board) permanently revoked, with absolutely no opportunity ever

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[1] *Nguyen v. State, Department of Health Medical Quality Assurance Commission*, 144 Wn.2d 516, 528, 29 P.3d 689 (2001) ("*Johnston* and *Kindschi* [*infra*, at fn.2] are unquestionably the law of this jurisdiction"). This Court left absolutely no doubt this is the law!

[2] *See Washington Medical Disciplinary Board v. Johnston*, 99 Wn.2d 466, 474, 663 P.2d 457 (1983); *In re Kindschi*, 52 Wn.2d 8, 10-11, 319 P.2d 824 (1958), *Nguyen v. Department of Health Medical Quality Assurance Commission*, 144 Wn.2d 516, 29 P.3d 689 (2001), *Clausing v. Department of Health*, 90 Wn. App. 863, 955 P.2d 394 (1998).

for reinstatement, the Osteopathic Physician and Surgeon's license of Dale E. Alsager, D.O., Ph.D. (Dr Alsager). This Court has stated that such a penalty is the administrative death sentence. *In re Flynn*.[3] The only way the Board could impose the death penalty on Dr Alsager was by:

1. Violating his fundamental and absolute Fifth Amendment right to remain silent and privilege against self-incrimination; and

2. Obtaining what were alleged to be his patient prescription records without a search warrant in violation of Wash. Const. art. I, § 7.

The Board's patent violation of these fundamental constitutional rights and privileges disregarded and trampled under this Court's clear and unequivocal long-established rules of law that:

1. The U.S. Supreme Court's decisions interpreting and applying the Fifth Amendment are binding on Washington courts in their interpretation and application of Wash. Const. art. I, § 9 (*Unga* and *Earls*);[4] and

2. Wash. Const. art. I, § 7, is more protective of private affairs than is the Fourth Amendment (*Jones*, *O'Neill*, and *Ladson*).[5]

The Board, by and through the Department of Health-employed Presiding Officer, used these constitutional and Washington law violations to:

1. Permit the prosecutor to call Dr Alsager and be compelled to testify against himself;

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[3] *In re Revocation of the License to Practice Dentistry of Flynn*, 52 Wn.2d 589, 328 P 2d 150 (1958)

[4] *State v Unga*, 165 Wn 2d 95, 100, 196 P.3d 645 (2008), *State v Earls*, 116 Wn 2d 364, 375, 805 P 2d 211 (1991).

[5] *State v Jones*, 146 Wn.2d 328, 332, 45 P.2d 1062 (2002); *State v. O'Neill*, 148 Wn.2d 564, 584, 62 P 3d 489 (2003); *State v Ladson*, 138 Wn 2d 343, 348, 979 P.2d 833 (1999)

2. Permit the prosecutor to question an empty chair at trial when Dr Alsager refused to be called and compelled to testify as a witness against himself;

3. Permit the prosecutor to comment on Dr Alsager's refusal to testify;

4. Deny Dr Alsager's motions in limine and at trial to exclude purported evidence that was illegally obtained through a warrantless search; and

5. Admit and use against Dr Alsager, to establish his guilt, illegally obtained, incompetent evidence.

These violations of Dr Alsager's fundamental constitutional rights and privileges allowed the Board to erroneously conclude that he:

1. Failed to cooperate with the DOH and Board; and

2. Violated a Board Order related to prescriptions;

thus resulting in the death sentence, all approved by the Court of Appeals.

The Court of Appeals, falling into the same abyss as did the Maryland Court of Appeals from the purported absence of its own State Supreme Court precedent, affirmed the death sentence imposed by the Board. Dr Alsager relies on this Court to affirm and establish the relevant precedent and reverse the Board's death sentence and the Court of Appeals affirmation, as did the Maryland Supreme Court[6] and all other federal and State courts[7] that actually and faithfully apply established constitutional law to quasi-criminal actions.

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[6] *One 1995 Corvette v. Mayor and City Council of Baltimore*, 724 A 2d 680 (Md. 1999), *cert denied*, 528 U S. 927, 120 S Ct 321, 145 L Ed. 2d 250 (1999)

[7] *See, e g , State ex rel. Oklahoma Bar Association v Wilcox*, 227 P 3d 642, 654-55, 658 (Okla. 2009); *State ex rel Vining v Florida Real Estate Commission*, 281 So.2d 487, 491 (Fla. 1973); *State Bar of Michigan v. Woll*, 194 N.W.2d 835 (Mich 1972).

II. IDENTITY OF PETITIONER

Pursuant to RAP 13.4(c)(3), Dale E. Alsager is the Petitioner asking the Supreme Court to grant discretionary review of the Court of Appeals decision terminating review.

III. CITATION TO COURT OF APPEALS DECISIONS

The Court of Appeals, Division 2, issued and filed its Part Published Opinion on November 15, 2016. *See* Appendix, at pp. APP-2 -- APP-29.

Dr Alsager timely filed a Motion to Publish Part III (Declaratory Judgment) on November 16, 2016. The Court of Appeals summarily denied Dr Alsager's Motion to Publish on November 18. *See* Appendix, at p. APP-30.

IV. ISSUES PRESENTED FOR REVIEW

The issues of law presented to this Court for review are significant and far reaching legal issues under and pursuant to the federal and State Constitutions and State statutes including, *inter alia*:

1. Whether in the Board's quasi-criminal action against Dr Alsager and his professional license he is entitled as a matter of law to the blanket assertion and protection of his absolute U.S. Const., Amend. V right to remain silent and privilege against self-incrimination unfettered and without sanction or adverse inference?[8]

2. Whether because Wash. Const. art. I, §§ 7 and 9, rights and privileges are greater and more protective of private affairs than U.S. Const., Amend. IV and V, especially medical information and prescription records that have been afforded privacy protection since

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[8] *See* U S. Const., Amends. IV, V, and XIV; Wash Const art. I, §§ 2, 3, 7, 9, and 29;*Boyd v United States*, 116 U.S. 616, 634-35, 6 S. Ct. 524, 29 L Ed. 746 (1886), *Spevack v Klein*, 385 U.S 511, 87 S. Ct 625, 17 L. Ed 2d 574 (1967), *In re Ruffalo*, 390 U.S. 544, 88 S. Ct. 1222, 20 L Ed. 2d 117 (1968); RCW 18.130 100, RCW 34 05.020; WAC 10-08-220.

before statehood, there is no required records exception under Washington law and no patient medical information and/or prescription records, wherever located and by whomever kept, may be accessed by any government agency personnel without a search warrant, and all such records obtained by or subsequently discovered without a search warrant is not competent evidence and is subject to the exclusionary rule, omitted from the record, and not given any consideration?[9]

3. Whether in light of Dr Alsager's fundamental constitutional rights and privileges pursuant to U.S. Const., Amends. IV, V, and XIV, and Wash. Const art. I, §§ 2, 3, 7, 9, and 29, the following State statutes are unconstitutional and unenforceable in professional license disciplinary quasi-criminal actions; *to wit*: RCW 18.130.050(7), RCW 18.130.180(8), RCW 18.130.230(1), RCW 70.02.050(2)(a), and RCW 70.225.040(3) (the latter two in the absence of a search warrant)?

4. Whether the Uniform Declaratory Judgment Act (UDJA) in RCW 7.24.146 is unconstitutional as applied in its absolute bar to actions for Declaratory Judgment arising from agency actions reviewable under the Administrative Procedure Act (APA) where a Declaratory Judgment action is brought stemming from and following an agency's declining to issue a Declaratory Order which, although such exhausts available administrative remedies, under the APA does not constitute an action reviewable under the APA?[10]

5. Whether the APA factually and legally provides an adequate and timely remedy for Dr Alsager's being forced to decide without

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[9] This particular issue addresses the greater protection afforded private affairs and testimonial physical records under the Washington Constitution, including a reasonable expectation of privacy in physician prescription records that was recognized as an integral part of Washington law at and prior to statehood. *See* 1881 Code of (the Territory of) Washington, Section 936, 1891 Laws of Washington, Chapter CLIII (153), Section 12 The Board and the Court of Appeals ignored the persuasive Fourth Amendment analysis given in *Oregon Prescription Drug Monitoring Program v U S. Drug Enforcement Administration*, 998 F. Supp 2d 957 (D Oregon 2014)

[10] Consolidated in Dr Alsager's appeal is Case No 47367-4-II (on appeal from the Superior Court's CR 12(b)(6) dismissal of Dr Alsager's action against the Respondents for Declaratory Judgment and Injunctive Relief challenging the constitutionality of these same statutes (stemming from discovery, and adding RCW 70 225.040(3)) in the investigative/pre-charging document phase of the DOH/Board's quasi-criminal professional license disciplinary action against him and his professional license) *See* **Certified Administrative Record (CAR)**, at 709-15.

judicial determination at that time whether to waive his fundamental constitutional rights and privileges or to assert them thereby facing sanctions and penalties including the revocation of his professional license, in light of the Board's admitted lack of authority to adjudicate and enforce his personal constitutional rights and privileges and in light of the provisions of Wash. Const. art. I, § 2, the APA in RCW 34.05.020, and WAC 10-08-220, as possible post-adjudicative due process remedies do not make constitutional the deprivation of, or sanction for the assertion of, fundamental personal Fourth and Fifth Amendment rights and privileges at the beginning of and during a quasi-criminal action?[11]

V. STATEMENT OF THE CASE

A. DR ALSAGER HAS FIRMLY STOOD ON HIS CONSTITUTIONAL AND COMMON LAW RIGHTS

Since day one of the commencement of the Department of Health (DOH) investigation, Dr Alsager has respectfully but firmly stood on four concrete pillars of common law and constitutional law in asserting his rights and privileges that are and must be recognized in this quasi-criminal action:[12]

1. The common law pillar that Washington courts have long held that professional license disciplinary proceedings are quasi-criminal actions;

2. The constitutional law pillar that quasi-criminal actions are entitled, just as in criminal cases, to the full and blanket protection of the U.S.

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[11] As an important issue but one rendered moot by this Court's reversal of the Court of Appeals affirmance of the Board's Final Order, is whether the Board Panel as a matter of law can order ***permanent*** revocation of a license ***only if it specifically and expressly finds and concludes*** that Dr Alsager can ***never*** be rehabilitated or can ***never*** regain the ability to practice with reasonable skill and safety (*see* RCW 18.130.160, WAC 246-16-800(2)(b)(ii))?

[12] Dr Alsager asks this Court to review not only the Board's Final Order of Permanent Revocation of his professional license but also the Prehearing Orders and Orders on Reconsideration that all relate to the issues raised by him in this Appeal and erroneously decided by Review Judge/Presiding Officer Kuntz, a full copy of each of the challenged Orders is included in the CAR for review as well as to be included in the APPENDIX of Dr Alsager's main brief upon this Court's acceptance of this Petition for Discretionary Review. RAP 10.3(g); RAP 10.3(h); RAP 10.4(c).

Const., Amend. V right to remain silent and privilege against self-incrimination, unfettered and without risk of sanctions for their assertion and without adverse inference;

3. The constitutional law pillar that U.S. Const., Amends. IV and V as enhanced by the increased protection afforded private affairs and personal privacy by Wash. Const. art. I, §§ 7 and 9, prevents government agencies from obtaining private and personal medical records, including prescription records, from any source without probable cause and a validly issued search warrant; and

4. The common law pillar that, in quasi-criminal actions, documents obtained by an unlawful search and seizure are not competent evidence and are subject to the exclusionary rule as fruit of the poisonous tree.

All of the DOH and Board's cited legal authority, including that relied on by the Court of Appeals, in destroying all these concrete pillars stems from purely civil actions and on their face are clearly distinguishable and irrelevant to our case. Here, quasi-criminal is not a mere talisman as the State, and even the Court of Appeals, so fervently labors to have it characterized -- it is dispositive! As further and persuasively noted in *Boyd*:

> It may be that it is the obnoxious thing in its mildest and least repulsive form, but illegitimate and unconstitutional practices get their first footing in that way, namely, by silent approaches and slight deviations from legal modes of procedure. This can only be obviated by adhering to the rule that constitutional provisions for the security of person and property should be liberally construed. A close and literal construction deprives them of half their efficacy, and leads to gradual depreciation of the right, as if it consisted more in sound than in substance. It is the duty of courts to be watchful for the constitutional rights of the citizen, and against any stealthy encroachments thereon. Their motto should be *obsta principiis* [resist the first approaches or encroachments].

Boyd, 116 U.S. at 634-35. Nothing, absolutely nothing, argued by the DOH

and Board should be allowed to dissuade this Court from fully applying these foregoing legal principles and fundamental constitutional protections set forth in *Boyd* accorded the accused (here Dr Alsager), and private/personal records wherever located and by whomever kept (here, private medical records including alleged patient prescriptions), in quasi-criminal actions (here, the professional license disciplinary proceedings against Dr Alsager seeking, and obtaining, the permanent forfeiture of his professional license).

> [Q]uasi-criminal [actions] are within the reason of criminal proceedings for all the purposes of the fourth amendment of the constitution, and of that portion of the fifth amendment which declares that no person shall be compelled in any criminal case to be a witness against himself . . . .

Boyd, 116 U.S. at 634-35.[13]

B. BRIEF BACKGROUND STATEMENT

The DOH and Board totally ignored the time honored judicial doctrine of *stare decisis* – which this Court will not[14] – as well as ample persuasive

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[13] *See In re Ruffalo*, 390 U.S. at 551 (attorney disciplinary proceedings are quasi-criminal actions). Courts must be ever vigilant that we are here dealing with issues of substantial and fundamental personal rights and privileges that are never lightly presumed waived or relinquished. "And any compulsory discovery by extorting the party's oath, or compelling the production of his private books and papers, to convict him of crime, or forfeit his property, is contrary to the principles of free government. It is abhorrent to the instincts of an Englishman, it is abhorrent to the instincts of an American. It may suit the purposes of despotic power; but it cannot abide the pure atmosphere of political liberty and personal freedom." *Boyd*, 116 U.S. at 631-32. This Court has long held that a professional license is a very valuable property right accorded an individual by the State and is afforded fundamental constitutional protections. *See, e.g., Nguyen*, 144 Wn.2d at 522-23 (only issue presented to this Court was the due process standard of proof required in quasi-criminal action).

[14] "The Court follows its own decisions for the same reasons for which all courts – whether bound by the doctrine of precedent or not – do it, namely, because such decisions are a depository of legal experience to which it is convenient to adhere; because they embody what (continued)

authority, took their jackhammer and destroyed each and every one of the foregoing concrete common law and constitutional law pillars and in so doing imposed the ultimate punishment on Dr Alsager, the permanent revocation of his professional license as an Osteopathic Physician and Surgeon without any chance for reinstatement – the administrative death penalty. His absolute right to remain silent and privilege against self-incrimination were cast aside and ignored as the prosecution was permitted to query an empty chair and the Board Panel was allowed to draw an adverse inference from Dr Alsager's standing on his constitutional rights. He was charged with and found guilty of unprofessional conduct for his failure to cooperate, again by standing on his constitutional rights. Alleged prescription records were obtained by DOH admittedly without patient consent and without any search warrant supported by probable cause.[15] State statutes purportedly authorizing

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[14](...continued)
the Court thinks is the law, [and] because respect for decisions given in the past makes for continuity and stability, which are of the essence of orderly administration of justice . . "
Lissitzyn, Oliver J., *The International Court of Justice: Its Role in the Maintenance of International Peace and Security*, p. 21 (The Lawbook Exchange, Ltd 2006 [Department of Public Law and Government, Columbia University]) Originally published in 1951 by the Carnegie Endowment for International Peace (New York, issued as no 6 of United Nations Studies series).

[15] Alleged prescription records were obtained by DOH without authority of law by conducting an unlawful search of the Prescription Monitoring Program (PMP) database and without the Board first authorizing such an investigation, and then upon mere demand such records were obtained from pharmacies again without a search warrant and without any chain of custody and authentication; all of which were admitted over Dr Alsager's continuing objections. Rather than being declared inadmissible and excluded from the record as fruit of the poisonous tree as they should and must have been, all of the DOH-illegally obtained records were admitted over repeated objections and used as the sole basis for the Board Panel's erroneous findings and conclusions that Dr Alsager violated its 2008 Final Order.

such violations of sacrosanct constitutional rights and privileges under threat of sanctions and monetary penalties for noncompliance, as well as purportedly authorizing the search and seizure of patient prescription records without a validly supported and issued search warrant, include RCW 18.130.050(7), RCW 18.130.180(8), RCW 18.130.230(1), RCW 70.02.050(2)(a), and RCW 70.225.040(3);[16] each of which is beyond a reasonable doubt unconstitutional as applied to quasi-criminal professional license disciplinary actions, thus providing more than sufficient legal grounds for this Court to vacate the Board's Final Order and direct the Board to reinstate Dr Alsager's medical license. RCW 34.05.570(3)(a), -(c), -(d), -(e), -(f), -(g), -(h), and -(i).

In the absence of a definitive, prompt, and final binding determination of the issues presented by Dr Alsager in his consolidated appeals by this Court, the State will continue to investigate and punish professional licensees with impunity, in abject violation of their fundamental constitutional rights.

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[16] "Except in the rarest of circumstances, the *authority of law* required to justify a search pursuant to article I, section 7 consists of a valid search warrant or subpoena issued by a neutral magistrate. This court has never found that a statute requiring a procedure less than a search warrant or subpoena constitutes *authority of law* justifying an intrusion into the *private affairs* of its citizens. This defies the very nature of our constitutional scheme." *State v. Ladson*, 138 Wn.2d 343, 353 n.3, 979 P.2d 833 (1999). *See State v. Skinner*, 10 So.3d 1212, 1218 (La. 2009) (search warrant required because of reasonable expectation of privacy in prescription records), *De La Cruz v. Quackenbush*, 96 Cal. Rptr. 2d 92, 98-104 (Cal.App. 2000) (the mere fact that the government may require a business to maintain certain records is not sufficient justification for the government to seize those records without a **search warrant or subpoena** – as for which here we admittedly have neither). "The Government's anxiety to obtain information known to a private individual does not without more render that information public; if it did, no room would remain for the application of the constitutional privilege [of the Fourth and Fifth Amendments]. Nor does it stamp information with a public character that the Government has formalized its demands in the attire of a statute: if this alone were sufficient, the constitutional privilege could be entirely abrogated by any Act of Congress." *Marchetti v. United States*, 390 U.S. 39, 57, 88 S. Ct. 697, 19 L. Ed. 2d 889 (1968).

C. BACKGROUND STATEMENT OF PROCEDURES

Dr Alsager initially petitioned the Board to issue a Declaratory Order addressing his constitutionality challenges. The Board declined to issue such an Order and Dr Alsager sought judicial review.[17] With no guidance from this Court forthcoming regarding his constitutional rights in a quasi-criminal action and the unconstitutionality of statutes.[18] Dr Alsager filed several pre-trial motions.[19] Failing in all of his proper objections to procedural matters and evidence, the Board conducted its trial against Dr Alsager, at which by and through his attorney he participated with opening and closing statements; cross-examination of the DOH witness; and fully argued, supported, asserted,

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[17] Although declining to issue a Declaratory Order is not an action reviewable under the APA, the superior court dismissed Dr Alsager's suit on the State's CR 12(b)(6) motion. Dr Alsager appealed directly to this Court, the Court transferred the case to the Court of Appeals, and that Court consolidated that appeal with the appeal of the Board's final decision

[18] The Court's refusal to issue a Declaratory Judgment regarding Dr Alsager's constitutional challenge unfairly and unjustly placed him "between the *Scylla* of intentionally flouting state law and the *Charybdis* of foregoing what he believes to be constitutionally protected activity," a dilemma that the office of Declaratory Judgment is intended to prevent *Steffel v Thompson*, 415 U S. 452, 462, 94 S Ct 1209, 39 L Ed 2d 505 (1974).

[19] Including *inter alia* motions for reconsideration, addressing (a) his constitutional rights and privileges; and (b) suppression of evidence obtained by the State without a search warrant and in violation of privacy rights. Dr Alsager's defenses to the Board's Statement of Charges of alleged unprofessional conduct are set forth in detail in his (a) Motion To Dismiss Statement Of Charges, ¶ 2.1 (RCW 18 130.180(8)) dated April 9, 2014 (CAR, at 920-40), (b) Motion In Limine To Suppress And Exclude All DOH Prescription-Related Documents And Evidence, **And** Motion To Dismiss Statement Of Charges, ¶ 2.1 (RCW 18 130 180(9)) dated April 12, 2014 (CAR, at 959-92), and (c) Addendum To Motion In Limine To Suppress And Exclude All DOH Prescription-Related Documents And Evidence; **And** Motion To Dismiss Statement Of Charges, ¶ 2 1 (RCW 18 130 180(9)) dated April 14, 2014 (CAR, at 997-1003). Additional pre-trial briefs and motions for reconsideration are found in the CAR, at 270-78, 531-38, 555-68, 678-82, 735-41, 945-54, 1022-26, 1043-55, 1067-75, 1622-26 (includes reference to *State v. Gunwall*, 106 Wn 2d 54, 720 P 2d 808 (1986), and an analysis as to greater protection given private records under Wash. Const. art. I, §§ 7 and 9) The relevant disposition of these pre-trial motions was made by the Presiding Officer in Prehearing Order Nos 10, 11, and 12 *See* CAR, at 1452-66, 1627-32; and 1633-45

and defended his full and blanket federal and State constitutional rights and privileges not to be called, not to testify, and to have no adverse inference drawn therefrom in this quasi-criminal action. CAR, at 2007-125 (Verbatim Transcript). All of Dr Alsager's objections were summarily rejected by the Presiding Officer (CAR, at 2037-49) and the **prosecutor was permitted to query an empty chair** (CAR, at 2056-65) from which the Board Panel was **permitted to draw an adverse inference**. CAR, at 2065, 2123.[20]

The superior court affirmed the Board's action, in large part due to the lack of precedent by this Court on the constitutional issues raised.[21] The Court of Appeals affirmed the Board's action, again in large part, due to the lack of this Court's clear precedent with respect to the application of fundamental constitutional rights and privileges to quasi-criminal actions.

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[20] Evidence that should have been suppressed and that was not subject to any search warrant, chain-of-custody and authentication was admitted over Dr Alsager's objections (CAR, at 959-92, 997-1003, 1622-26, 1633-45, 2073-85) and Dr Alsager's Sanctioning Brief was at the last second improperly pared by the Presiding Officer (CAR, at 1631 ¶ 5(E), 1956-2006, 2012-21) all resulting in the Board Panel issuing its Final Order finding Dr Alsager guilty of unprofessional conduct and imposing the ultimate administrative death penalty on him and his professional career and livelihood, the permanent revocation of his professional license with absolutely no opportunity for reinstatement. CAR, at 1703-17. Dr Alsager's Petition for Reconsideration of the Board's Final Order (CAR, at 1723-38) was summarily rejected by Presiding Officer/Review Judge Kuntz. CAR, at 1810-13

[21] Astonishingly, the main reason for the superior court affirming the Board's permanent revocation of Dr Alsager's professional license was its observation that there is simply no Washington appellate court opinions regarding the application of Fourth and Fifth Amendment rights and privileges, as enhanced by our Washington Constitution, to quasi-criminal professional license disciplinary actions. Without definitive and final precedential determination of such fundamental rights and privileges in this context, the superior court Judge felt constrained to simply affirm the Board's decision and pass these urgent issues of constitutional and statutory law on to the appellate courts for review and final, binding decision

VI. ARGUMENT

This Court should grant Dr Alsager's Petition for Discretionary Review because (1) the decision of the Court of Appeals conflicts with decisions of this Court, RAP 13.4(b)(1); (2) the decision of the Court of Appeals conflicts with a decision of another Division, RAP 13.4(b)(2); (3) this case involves significant questions of law under the U.S. Constitution and the Washington Constitution, RAP 13.4(b)(3); and (4) this case involves issues of substantial public interest that should be determined by this Court, RAP 13.4(b)(4).

A. This Court Is The Final Arbiter Of State Constitutional And Statutory Law – RAP 13.4(b)(3) And RAP 13.4(b)(4)

Dr Alsager's consolidated appeals present significant issues of both State constitutional and statutory law. Whereas the U.S. Supreme Court is the final arbiter of issues regarding the federal Constitution,[22] it is this Court that is the final arbiter of issues regarding our State Constitution and statutes.[23]

> When the people of Washington established the State's government, they wrote their own constitution, a basic law to always guide all public officers in the performance of their functions. And they placed upon the courts the solemn obligation of keeping that

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[22] "[E]ver since *Martin v Hunter's Lessee*, 14 U.S (1 Wheat) 304, 4 L. Ed 97 (1816), it has been established that the United States Supreme Court is the final arbiter of the [federal] Constitution." *Defunis v Odegaard*, 84 Wn.2d 617, 630, 529 P 2d 438 (1974) (Finley, J., concurring in part, dissenting in part).

[23] "This court's primary role [is] to be guardian of the law and final arbiter of the state constitution." *Freeman v Gregoire*, 171 Wn 2d 316, 338, 256 P 3d 264 (2011) (J.M Johnson, J., dissenting) For relevant example, "[t]he substantial difference in language [of Wash. Const art I, § 7 and that of U.S Const., Amend IV] allows us to provide heightened protection [to our citizen's private affairs]." *Washington v Chrisman*, 100 Wn.2d 814, 818, 676 P 2d 419 (1984). "In the absence of any constitutional issues, the Washington Supreme Court the final arbiter of the meaning of Washington statutory law." *In re Petersen*, 138 Wn 2d 70, 80-81, 980 P.2d 1204 (1990).

> constitution inviolate. The constitution was written to be obeyed, not evaded or by-passed.

Freeman v. Gregoire, 171 Wn.2d 316, 335, 256 P.3d 264 (2011) (J.M. Johnson, J., dissenting). It is against this legal backdrop that Dr Alsager respectfully asks this Court, as the final arbiter of State constitutional and statutory law, to grant his Petition and promptly and finally determine the issues presented as binding precedent for all lower tribunals.[24] RAP 13.4(b).

B. The Court of Appeals Decision Holds That Quasi-Criminal Has No Constitutional Legal Significance And Such An Opinion Conflicts With The Well-Established Decisions Of The U.S. Supreme Court And This Supreme Court – RAP 13.4(b)(1) And RAP 13.4(b)(3)

Both the Board, by and through its Presiding Officer, and the Court of Appeals held that quasi-criminal was of no constitutional significance or im-

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[24] *Standard and Scope of Review*. Although this Court has a Part Published Opinion of the Court of Appeals to consider as to whether or not the published portions should in fact become legal precedent governing all future quasi-criminal professional license disciplinary actions, that appellate decision in no way binds this Court or otherwise limits the standard and scope of review the Court will apply to itself deciding the fate of Dr Alsager's appeals and the constitutional principles applicable to these quasi-criminal actions. Dr Alsager presents two cases consolidated on appeal. The initial appeal was from the superior court's CR 12(b)(6) dismissal of his Complaint for Declaratory Judgment and Injunctive Relief stemming from the Board's declining to issue a Declaratory Order regarding his challenge to the constitutionality of the subject statutes. This Court reviews *de novo* the CR 12(b)(6) dismissal of complaints *Kinney v Cook*, 159 Wn 2d 837, 842, 154 P.3d 206 (2007) (citing *Tenore v. AT&T Wireless Services*, 136 Wn.2d 322, 329-30, 962 P 2d 104 (1998)). The second appeal is that from the Board's Final Order permanently revoking Dr Alsager's professional license, including and not limited to all Pre-Hearing Orders issued by the Presiding Officer that denied Dr Alsager his fundamental constitutional rights and privileges and the privacy protection afforded private affairs. This Court stands in the same position as the superior court in reviewing administrative agency decisions under the APA. *Hardee v Department of Social & Health Services*, 172 Wn 2d 1, 7, 256 P 3d 339 (2011); *Tapper v Employment Security Department*, 122 Wn.2d 397, 402, 858 P 2d 494 (1993). This Court applies the standards of the APA directly to the record before the agency. *Tapper*, 122 Wn.2d at 402 RCW 34.05.570 governs the scope and applicable standards of review to reverse an agency's adjudicative decision, including constitutional grounds. Whether an agency order, or the statute supporting the order, violates constitutional provisions is a question of law that this Court reviews *de novo*. *Hardee*, 172 Wn.2d at 7

portance to Dr Alsager's assertion of his constitutional rights and privileges, and the privacy protection of private affairs and records, under and pursuant to U.S. Const., Amends. IV and V, and Wash. Const. art. I, §§ 7 and 9. The Court of Appeals decision directly conflicts with the U.S. Supreme Court decisions in *Boyd*, *Ruffalo*, and *Spevack*; and with this Court's decisions in *Kindschi*, *Johnston*, and *Nguyen*. As observed by the U.S. Supreme Court, constitutional protections accorded the accused in quasi-criminal actions is not limited to mere due process standard of review; the protections include those independent fundamental rights and privileges under and pursuant to the Fourth and Fifth Amendments. And these fundamental rights have not diminished one iota since *Boyd* was pronounced in 1886. The Board and the Court of Appeals looked to *Ward*[25] as some kind of magic bullet that was the death knell of *Boyd* – but clearly *Boyd* stands strong and potent.[26] This Court has never held, and will not hold, that *Nguyen* is the *end-all* regarding the applicability of constitutional rights and privileges in what is this Court's clear and unequivocal rule of law that professional license disciplinary proceedings are quasi-criminal actions. *Spevack*, 385 U.S. at 514-15 ("the right

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[25] *United States v. Ward*, 448 U.S. 242, 100 S. Ct. 2636, 65 L. Ed. 2d 742 (1980).

[26] All *Ward* stands for is that the monetary penalty assessed under the federal Clean Water Act was civil, and not criminal or quasi-criminal. This Court's decision in *Nguyen* was issued 21 years **after** *Ward*, and 17 years **after** enactment of the Uniform Disciplinary Act, and absolutely confirmed that the law of Washington is that professional license disciplinary proceedings are quasi-criminal actions. The Maryland Court of Appeals in the *One 1995 Corvette* case fell into the same abyss of writing the death knell to *Boyd*, but that was swiftly and convincingly reversed in 1999 by the Maryland Supreme Court and the U.S. Supreme Court denied certiorari. This Court must do the same here.

of a [licensee in a disciplinary action] to remain silent unless he chooses to speak in the unfettered exercise of his own will, and to suffer no penalty . . . for such silence"); *City of Philadelphia v. Kenny*, 369 A.2d 1343, 1348-49 (Pa.Commw.Ct. 1977), *cert. denied*, 434 U.S. 923 (1978) (identifying blanket Fifth Amendment rights in quasi-criminal action). Quasi-criminal is not a mere talisman; it has very clear and significant constitutional effects that the Board and Court of Appeals totally, and wrongly, disregarded into oblivion.

> 'Quasi-criminal' is not an empty label. The classification is in no sense illusory; it has reference to the safeguards inherent in the very nature of the offense, the punitive quality that characterizes the proceeding, and the requirements of fundamental fairness and essential justice to the accused.

State v. Laird, 135 A.2d 859, 861-62 (N.J. 1957).

The Court of Appeals failed to honor the constitutional significance of this Court's long line of decisions holding professional license disciplinary proceedings as quasi-criminal actions, and thus failed to apply the Fourth and Fifth Amendment, and Wash. Const. art. I, §§ 7 and 9, fundamental protections accorded Dr Alsager as a matter of well-established law. It is up to this Court to correct such egregious errors and clearly set the precedents for all lower tribunals to faithfully follow. RAP 13.4(b)(1) and RAP 13.4(b)(3).

C. The Decision Of Division II Conflicts With The Decision Of Division I Distinguishing *Ward* From *Boyd* And Affirming The Absolute Fifth Amendment Rights In Quasi-Criminal Cases – RAP 13.4(b)(2)

In distinguishing *Ward* from *Boyd*, the Court of Appeals, Division I, made the correct observation of constitutional law that the "Fifth Amendment

privilege against compulsory self-incrimination applies in any criminal case, U.S. Const. amend. 5, as well as in quasi-criminal cases, *Boyd v United States*, 116 U.S. 616, 633-34, 29 L. Ed. 746, 6 S. Ct. 524 (1886), but not in civil enforcement proceedings. *Ward*, 448 U.S. at 248, 251-55 " *Washington v. Ankney*, 53 Wn. App. 393, 397, 766 P.2d 1131 (1989).

The Division II decision placing *Ward* in a superior position to *Boyd* and relegating Dr Alsager's absolute Fifth Amendment rights into oblivion clearly conflicts with the correct legal analysis of this issue by Division I in *Ankney*. This Court must once and for all resolve this conflict and establish the constitutional principles binding on all lower tribunals. RAP 13.4(b)(2).

D. Permitting Agencies To Obtain Private Prescription Records Without A Search Warrant Is A Clear Violation Of Wash. Const. Art. I, § 7, And Involves A Significant Issue Of Public Interest -- RAP 13.4(b)(3) And RAP 13.4(b)(4)

The Court of Appeals failed to conduct even a minimal *Gunwall* analysis instead relying on *Murphy v. State*, 115 Wn. App. 297, 62 P.3d 533 (2003), to support its opining that the DOH acquisition of what were alleged to be Dr Alsager's prescription records without a search warrant was permissible under the statutes he challenges as unconstitutional. The Court of Appeals cannot be more wrong in its analysis of and conclusions regarding this most significant issue of constitutional law respecting private affairs.[27]

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[27] The Court of Appeals, Division I, in *Murphy* employed a *de minimis* historical analysis to justify the State's acquisition of physician prescription records *sans* search warrant. The *Murphy* Court referenced only a portion of Section 12 of the 1891 Act To Regulate The Prac- (continued ..)

A proper *Gunwall* analysis, as conducted by Dr Alsager, thoroughly analyzes both pre-statehood[28] and near post-statehood[29] statutes regulating the prescription and dispensing of pharmaceuticals, and concludes that the State has always afforded physician prescriptions protection from government intrusion.[30] It is obvious that *Boyd* had a profound impact on the framers of our State Constitution insofar as the protection of private affairs[31] – something that the public has a profound interest in continuing notwithstanding the State's attempt to now intrude upon the physician-patient

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[27](. .continued)
tice Of Pharmacy as sole authority for such warrantless intrusion in private affairs. However, and most noteworthy and patently disingenuous, in concluding that the State has *always* asserted an interest in prescription record keeping and production on demand to government agents and thus affirming the warrantless seizure, the Court **omitted** the final sentence of Section 12; *to wit*, "The provisions of this section shall ***not*** apply to dispensing by physicians' prescriptions." (Emphasis added.) Such an obvious and arguably intentional omission renders *Murphy* totally unworthy of any consideration in Dr Alsager's appeal

[28] Section 936 of the 1881 Code of (the Territory of) Washington (excluded physician prescriptions from record keeping)

[29] 1891 Laws of Washington, Chapter CLIII (153), Section 12 (excluded physician prescriptions from record keeping and disclosure to government agents). Even during the years of Prohibition, only those non-medicinal prescriptions for intoxicating liquor were initially required to be kept and disclosed, however, this too was very soon eliminated from statute with absolute protection from such intrusion given to physician medical prescriptions *See* 1915 Laws of Washington, Chapter 2, Section 7, repealed by 1917 Laws of Washington, Chapter 19; repeal of all Prohibition law by 1933 Laws of Washington, Chapter 2.

[30] "Except in the rarest of circumstances, the *authority of law* required to justify a search pursuant to article I, section 7 consists of a valid search warrant or subpoena issued by a neutral magistrate. This court has never found that a statute requiring a procedure less than a search warrant or subpoena constitutes *authority of law* justifying an intrusion into the *private affairs* of its citizens. This defies the very nature of our constitutional scheme." *State v Ladson*, 138 Wn 2d 343, 353 n 3, 979 P.2d 833 (1999)

[31] Comment, *The Origin and Development of Washington's Independent Exclusionary Rule: Constitutional Right and Constitutionally Compelled Remedy*, 61 Wash. L. Rev 459, 522 (1986).

relationship and the expectation of privacy arising therefrom in both the physician as well as his/her patient. Wash. Const. art. I, § 7. Even under the Fourth Amendment, as buttressed by the Fifth Amendment applied to compulsory production of testimonial private records, courts are uniformly finding and concluding that the public has a reasonable expectation of privacy in prescriptions regardless of whoever keeps them and wherever such may be located.[32] By limiting its consideration solely to *Murphy* with its obvious faults and shortcomings, the Court of Appeals sidestepped making a thorough *Gunwall* analysis of this very significant constitutional issue that is critical not only to Dr Alsager's appeal and the clear error by the Board of not suppressing and excluding as fruit of the poisonous tree all the alleged prescription records, but to the public in general who deserve and reasonably expect protection from government intrusion into their private affairs without the judicial oversight essential to support and issue a search warrant.[33]

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[32] *See Oregon Prescription Drug Monitoring Program v. U.S. Drug Enforcement Administration*, 998 F. Supp. 2d 957 (D. Oregon 2014), *Cohan v. Ayabe*, 322 P.3d 948, 955 n.6 (Haw. 2014); *State v. Skinner*, 10 So.3d 1212, 1218 (La. 2009). *See also* Clemens, *The Pending Reinvigoration of Boyd: Personal Papers Are Protected by the Privilege Against Self-Incrimination*, 25 N. Ill. U. L. Rev. 75 (2004) (*Boyd* still applies to protect personal papers from seizure without a warrant); *De La Cruz v. Quackenbush*, 96 Cal. Rptr. 2d 92, 98-104 (Cal.App. 2000) (the mere fact that the government may require a business to maintain certain records is not sufficient justification for the government to seize those records without a search warrant), *United States v. Hubbell*, 530 U.S. 27, 55-56, 120 S. Ct. 2037, 147 L. Ed. 2d 24 (2000) (Justice Thomas, with whom Justice Scalia joins, concurring).

[33] As a general rule, an issue of public interest arises where the legal rights of a substantial segment of the population are potentially affected or at risk. *State v. Watson*, 155 Wn.2d 574, 577-78, 122 P.3d 903 (2005). Government acquisition of private prescription records without a search warrant presents a significant risk to a protected and reasonable right of privacy. RAP 13.4(b)(4)

This Court should grant Dr Alsager's Petition and decide as precedent that physician prescriptions are protected private affairs under and pursuant to Wash. Const. art. I, § 7, and cannot be obtained by the State or any agency without a valid search warrant supported and issued on probable cause.[34]

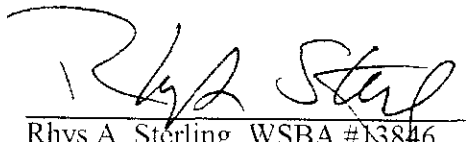
VII. CONCLUSIONS

Based on the foregoing, Dr Alsager respectfully asks this Court to grant his Petition and upon its determination of the constitutional and statutory issues presented reverse the Court of Appeals, vacate the Board's Final Order, and remand this matter to the Board with directions to fully reinstate Dr Alsager's Osteopathic Physician and Surgeon's license.

DATED this 8th day of December, 2016.

Respectfully submitted,

RHYS A. STERLING, P.E., J.D.



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Attorney for Petitioner Dale E. Alsager

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[34] RAP 13.4(b)(3), RAP 13.4(b)(4). It must also be noted as a significant issue that the DOH initiated its investigation into prescriptions allegedly issued by Dr Alsager **without** prior authorization from the Board – as is required by law. *Clients A v. Yoshinaka*, 128 Wn. App 833, 843, 116 P 3d 1081 (2005). This clearly makes any and all records fruit of the poisonous tree, unlawfully obtained, suppressed and excluded from admission to the Board as part of any legal record that could be used as evidence against Dr Alsager. RCW 34.05.452(1). *Seymour v. Washington State Department of Health, Dental Quality Assurance Commission*, 152 Wn. App. 156, 216 P 3d 1039 (2009) (although sidestepping the constitutional issue of warrantless searches, *Id.* at 168 n 6, the Court held that all documents obtained stemming from an unauthorized, warrantless inspection must be excluded from any disciplinary action pursuant to the provisions of RCW 34.05.452(1), which states that "the presiding officer shall exclude evidence that is excludable on constitutional or statutory grounds," *Id.* at 171).

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APPENDIX

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APPENDIX INDEX

Filed
Washington State
Court of Appeals
Division Two

November 15, 2016

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

DALE E. ALSAGER, D.O. Appellant, v. BOARD OF OSTEOPATHIC MEDICINE AND SURGERY, DEPARTMENT OF HEALTH, STATE OF WASHINGTON, Respondents.	No. 47367-4-II (Consolidated with No. 47727-1-II) PART PUBLISHED OPINION

BJORGEN, C.J. — Dale Alsager appeals the Washington Board of Osteopathic Medicine and Surgery's[1] permanent revocation of his license to practice medicine, as well as several of the Board's prehearing rulings and its order denying reconsideration. He makes two primary arguments. First, he contends that the Board violated his federal and state constitutional rights against compelled self-incrimination by sanctioning him for failing to testify and to disclose prescription records. Second, he contends that the Board violated his federal and state constitutional rights against unlawful searches and seizures by searching and procuring his prescription records from the state's prescription monitoring program and participating pharmacies. He also argues that the superior court erred by dismissing his petition for declaratory judgment under the Uniform Declaratory Judgments Act (UDJA), chapter 7.24

[1] We refer to this entity as the Board.

RCW, that the Board's findings of fact and conclusions of law were insufficiently supported, that a panel member should have been disqualified, and that documentary evidence was admitted without authentication

We hold in the published portion of this opinion that the Board's proceedings did not deprive Alsager of any right against compelled self-incrimination and that the Board and Department of Health acted within constitutional bounds in procuring the prescription records. In the unpublished portion of this opinion, we hold that the superior court properly dismissed Alsager's petition for declaratory action, that the Board's findings of fact and conclusions of law were sufficiently supported, that Alsager failed to establish grounds for the panel member's disqualification, and that any error in admitting the documentary evidence without assessing authentication was harmless. Accordingly, we affirm the Board's revocation of Alsager's license to practice medicine.

FACTS

In 2008, the Board sanctioned Alsager for inappropriately prescribing potentially dangerous medications without conducting necessary patient examinations.[2] The sanctions prohibited Alsager from prescribing Schedule II or III controlled substances until he completed an approved residency or pain management training course.

In 2012, the Board received a complaint regarding Alsager's treatment of one of his patients and notified Alsager of the complaint. Following the Uniform Disciplinary Act (UDA),

[2] Alsager appealed the Board's 2008 order, and we affirmed in an unpublished opinion. *Alsager v. Wash. State Bd. of Osteopathic Med. & Surgery*, noted at 155 Wn. App. 1016, ___ P.3d ___ (2010).

chapter 18.130 RCW, the Board found that the complaint had merit and initiated an investigation. RCW 18.130.080(2). An investigator contacted Alsager, requesting that he produce a copy of the patient's file, which included prescription records, and make a written statement responding to the complaint.

Alsager did not answer the request or provide the requested information. Instead, he asked the Board to quash the production demand on constitutional grounds. The Board denied Alsager's request. The investigator then performed a search of the State's prescription monitoring program database, which archives prescriptions for medical drugs filled in Washington. *See* Chapter 70.225 RCW. This search uncovered prescription records showing that Alsager prescribed Schedule III controlled substances to his patients and himself after the Board issued its prior order prohibiting him from doing so.

Based on the information the investigator uncovered from the database, the Board authorized additional investigation. The investigator again contacted Alsager, this time requesting medical records for patients to whom Alsager had prescribed Schedule II or III controlled substances since the Board issued its 2008 order. Alsager responded, asserting that his Fourth and Fifth Amendment rights protected him from compelled cooperation. The investigator then requested prescription records from various pharmacies.

Alsager petitioned the Board under RCW 34.05.240 for an order declaring that he need not testify or produce the requested records on constitutional grounds. He also requested clarification as to the scope of the Board's 2008 order. The Board denied the petition and declined to clarify the scope of the order, finding that Alsager "ha[d] not demonstrated an

uncertainty necessitating resolution exists with regard[] to [its] language." Administrative Record (AR) at 1919.

Alsager then petitioned the superior court under the UDJA for a declaratory judgment that the Board could not require him to testify or produce the records and that the statutes imposing those requirements were facially unconstitutional. The superior court granted the Board's motion for summary judgment and dismissed the case, reasoning that Alsager could not circumvent Washington's Administrative Procedure Act (APA), chapter 34.05 RCW, by seeking a declaratory judgment. Instead, the superior court ruled that Alsager must utilize the judicial review process under the APA. Alsager appealed, and we have consolidated this appeal with the others described below.

Alsager also brought suit in federal court seeking a declaration that his compelled cooperation would violate his constitutional rights. The federal court denied him the relief he sought, similarly reasoning that the APA provided the appropriate avenue for review of his constitutional claims. *Alsager v. Bd. of Osteopathic Med. & Surgery*, noted at 573 Fed. Appx. 619 (9th Cir. 2014).

The Board ultimately charged Alsager with unprofessional conduct under the UDA for violating the 2008 order and failing to cooperate with the investigation. For this conduct, the Board summarily suspended his license to practice. The Board held a show cause hearing on the summary suspension at Alsager's request, after which it upheld that sanction.

Before the hearing on his charges before the Board, Alsager moved for several prehearing rulings. Among other matters, he moved for rulings that his constitutional rights precluded

compelled testimony or production of documents, that several members of the Board should be disqualified due to the fact that they practiced in the same geographic area as Alsager, and that prescription records obtained from the prescription monitoring program database were not authenticated and were therefore inadmissible. The Board denied each of these motions.

The Board held its hearing on the merits of Alsager's charges on June 4, 2014. The Department of Health provided the prescription records from the database, as well as prescription records from pharmacies obtained by the investigator. The investigator testified and was cross-examined. Instead of making specific objections or focusing on specific topics, Alsager refused to testify or present any evidence on the general basis of the Fourth and Fifth Amendments. The presiding officer ruled that these protections did not apply and stated that it would instruct the panel that they may draw negative inferences from Alsager's refusal to testify. The Department then directed specific questions to an empty witness stand, and Alsager provided no individual responses or invocations of his rights.

The Board issued its Final Order on July 9, 2014. It concluded that Alsager had committed unprofessional conduct as defined in RCW 18.130.180 by repeatedly violating the 2008 order and by refusing to cooperate with the investigation. Based on these conclusions, the Board permanently revoked Alsager's license to practice osteopathic medicine in Washington. Subsequently, the Board denied Alsager's motion for reconsideration. Alsager appealed to the superior court, which denied the petition for judicial review.

Alsager appeals various prehearing orders by the Board, the Board's Final Order, the Board's denial of reconsideration, and the superior court's denial of the petition for judicial

review. We have consolidated this appeal with his earlier appeal of the superior court's dismissal of his declaratory judgment action.

ANALYSIS

Alsager presents two primary arguments. First, he argues that the Board violated his constitutional right against compelled self-incrimination by requiring him to cooperate with its investigation. Second, he contends that it engaged in a constitutionally unlawful search and seizure by searching the prescription monitoring program for records of the prescriptions he wrote. Alsager additionally argues that the Board's Final Order was not properly supported, one of the Board's panel members should have been disqualified from serving on the panel, and the Board erred by admitting prescription records that were not authenticated. In his appeal of the superior court's decision on declaratory judgment, he contends that the superior court improperly dismissed his petition on grounds that the declaratory action was unavailable in light of the judicial review process of the APA. We are not persuaded by these arguments.

I. RIGHTS AGAINST COMPELLED SELF-INCRIMINATION

Alsager argues that because a professional disciplinary proceeding is "quasi-criminal" in nature, the Board violated his constitutional right against compelled[3] self-incrimination by

[3] Alsager asserts that the Board's requirement that he testify and produce patient records constituted compulsion because it would impose penalties on him, among them revocation of this medical license, if he failed to comply. We agree with Alsager on this point. RCW 18.130.180(8) defines unprofessional conduct as including

> 8. [f]ailure to cooperate with the disciplining authority by:
> (a) Not furnishing any papers, documents, records, or other items;
> (b) Not furnishing in writing a full and complete explanation covering the matter contained in the complaint filed with the disciplining authority;

requiring him to testify and produce testimonial records. Br. of Appellant at 1-2. We disagree that these medical license revocation proceedings were sufficiently criminal in nature to require application of the Fifth Amendment protection against self- incrimination. Consequently, the Board did not violate Alsager's Fifth Amendment rights.

We review final administrative decisions under the APA. *Feil v E Wash Growth Mgmt Hr'gs Bd*, 172 Wn.2d 367, 376, 259 P.3d 227 (2011). We review the agency's decision, not the decision of the superior court on initial review *Pal v Wash State Dep't of Soc & Health Servs*, 185 Wn. App. 775, 781, 342 P.3d 1190 (2015). We will grant relief from the agency's decision if it suffers from one of the infirmities listed in RCW 34.05.570(3), which include:

> (a) The order, or the statute or rule on which the order is based, is in violation of constitutional provisions on its face or as applied;
> . . .
> (d) The agency has erroneously interpreted or applied the law.

RCW 34 05.570(3). The party asserting the invalidity of the agency decision bears the burden of showing that the decision is invalid on one of these grounds. RCW 34.05.570(1)(a).

Alsager claims that the Board's Final Order and the statutes on which it was based violate his constitutional rights. We review such issues de novo, though we presume that statutes are

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> (c) Not responding to subpoenas issued by the disciplining authority, whether or not the recipient of the subpoena is the accused in the proceeding; or
> (d) Not providing reasonable and timely access for authorized representatives of the disciplining authority seeking to perform practice reviews at facilities utilized by the license holder[.]

Because unprofessional conduct is grounds for discipline, including suspension or revocation of a physician's license, RCW 18.130.160, the statutory scheme compels disclosure and general cooperation with disciplinary proceedings. *See Spevack v Klein*, 385 U.S. 511, 516, 87 S. Ct. 625, 17 L. Ed. 2d 574 (1967).

constitutional. *City of Seattle v. Evans*, 184 Wn.2d 856, 861-62, 366 P.3d 906 (2015), *petition for cert. by Evans v. City of Seattle*, ___ U.S. ___ (2016).

A. Quasi-Criminal Actions

Alsager argues that board proceedings for revocation of a medical license are quasi-criminal in nature and therefore are subject to the protections of the Fifth Amendment to the United States Constitution and article I, section 9 of the Washington State Constitution. We disagree and hold that although board proceedings have a punitive aspect, they do not qualify as "criminal cases" within the meaning of those constitutional provisions.

The Fifth Amendment provides that "[n]o person . . . shall be compelled in any criminal case to be a witness against himself." U.S. CONST. amend. V. Similarly, article I, section 9 of our state constitution provides that "[n]o person shall be compelled in any criminal case to give evidence against himself." WASH. CONST., art. I, § 9. The protections provided by these provisions are coextensive. *State v. Unga*, 165 Wn.2d 95, 100, 196 P.3d 645 (2008).

Although the language of these constitutional provisions specifies that they are applicable only to "criminal cases,"

> suits for penalties and forfeitures, incurred by the commission of offenses against the law, are of [a] *quasi* criminal nature, . . . [and] are within the reason of criminal proceedings for all the purposes of the fourth amendment of the constitution, and of that portion of the fifth amendment which declares that no person shall be compelled in any criminal case to be a witness against himself.

Boyd v. United States, 116 U.S. 616, 634-35, 6 S. Ct. 524, 29 L. Ed. 746 (1886). However, this seemingly broad holding has been limited over the years. *United States v. Ward*, 448 U.S. 242, 253, 100 S. Ct. 2636, 65 L. Ed. 2d 742 (1980). Under *Boyd* and its progeny, the "government

may not abrogate the accused's privilege against self-incrimination by electing the vehicle of a nominally civil proceeding, when in reality, punishment for activity which violates the criminal law is being imposed." *In re Daley*, 549 F.2d 469, 475 (7th Cir 1977). A civil action is sufficiently criminal in nature if "[i]ts object, like a criminal proceeding, is to penalize for the commission of an offense against the law." *One 1958 Plymouth Sedan v Com of Pa.*, 380 U.S. 693, 700, 85 S. Ct. 1246, 14 L. Ed 2d 170 (1965).

Our Supreme Court has characterized professional disciplinary proceedings involving the revocation of licenses as quasi-criminal for the purpose of determining whether due process protections apply to such proceedings.[4] *Nguyen v State, Dep't of Health Med Quality Assurance Comm'n*, 144 Wn.2d 516, 527-29, 29 P.3d 689 (2001); *In re Johnston*, 99 Wn.2d 466, 474, 663 P.2d 457 (1983); *In re Kindschi*, 52 Wn.2d 8, 10-11, 319 P.2d 824 (1958). However, the full protections enjoyed by criminal defendants are not necessarily available in such quasi-criminal proceedings. *See Nguyen*, 144 Wn.2d at 527-28 (holding that clear and convincing evidence, rather than proof beyond a reasonable doubt, is required to impose sanctions in disciplinary proceedings); *cf Rowe v State, Dep't of Licensing*, 88 Wn. App. 781, 784-85, 946

[4] Alsager seems to take the position that the term "quasi-criminal" denotes a legally significant category of actions, much like the terms "civil" and "criminal." However, our cases have used the term to describe, not to categorize. *See, e g , In re Kindschi*, 52 Wn.2d 8, 11-12, 319 P.2d 824 (1958) (describing a professional disciplinary proceeding as "civil, not criminal, in nature; yet . . . *quasi criminal* in that it is for the protection of the public," and concluding that it is "a *special*, somewhat unique, statutory proceeding") (emphasis added). Simply labeling a proceeding "quasi-criminal" is not determinative of the rights a defendant in such a proceeding may assert. *Daley*, 549 F.2d at 476. We do not assign any categorical legal significance to the term "quasi-criminal," and instead analyze whether a claimed right applies in the context of a particular quasi-criminal action.

P.2d 1196 (1997) (holding that suspension of a driver's license for conduct already sanctioned in a criminal case did not violate defendant's constitutional rights against double jeopardy because it served a remedial purpose beyond the criminal penalties). Thus, we must decide whether a disciplinary proceeding for revocation of a medical license is quasi-criminal in a manner that requires application of the right against compelled self-incrimination.

Both *Kindschi* and *Nguyen* recognized that although the "consequence [of disciplinary sanctions] is unavoidably punitive," such sanctions are "not designed entirely for that purpose." *Kindschi*, 52 Wn.2d at 10-11; *Nguyen*, 144 Wn.2d at 528. Licensure of doctors and the disciplinary procedures used to enforce it are intended not simply to ensure that doctors comply with applicable law, but "to assure the public of the adequacy of professional competence and conduct in the healing arts." RCW 18.130.010; *see also Kindschi*, 52 Wn.2d at 10-11. Sanctioning unprofessional conduct serves primarily to maintain professional standards and promote public health and confidence, rather than seeking punitive goals like vengeance. This is akin to the system upheld in *Daley*:

> Because the primary function of state bar disciplinary proceedings is remedial, i.e., maintenance of the integrity of the courts and the dignity of the legal profession as well as protection of the public, we . . . hold that the Fifth Amendment privilege against self-incrimination does not proscribe the introduction in state bar disciplinary proceedings of testimony compelled under a grant of immunity.

549 F.2d at 477. We similarly conclude that the primary object of the UDA is remedial and regulatory, not punitive.

As the United States Supreme Court discussed in *Ward*, the following factors are relevant to determining whether a nominally civil action is sufficiently criminal in nature to trigger a

defendant's constitutional right against self-incrimination: (1) whether the penalty imposed has a "correlation to any damages sustained by society or to the cost of enforcing the law"; (2) whether the available sanctions include traditionally punitive penalties associated with criminal actions, like imprisonment or fines; and (3) whether the proceedings present some danger that the subject practitioner will prejudice himself with respect to possible criminal proceedings. 448 U.S. at 254. Ward also relied on the "overwhelming evidence" it found "that Congress intended to create a civil penalty in all respects and quite weak evidence of any countervailing punitive purpose or effect . . ." *Id.*

On balance, these *Ward* factors weigh against a holding that Board disciplinary actions are sufficiently criminal to trigger a practitioner's constitutional rights against compelled testimony and evidence production. Suspension or revocation of a license for unprofessional conduct in medicine is closely correlated to ensuring safe and adequate medical care and to promoting public trust in the medical profession. The available sanctions do not include imprisonment and are tailored to minimize or prevent further unprofessional conduct, though fines may be levied. *See* RCW 18.130.160. However, any authority imposing sanctions under the UDA, including fines, "must first consider what sanctions are necessary to protect or compensate the public." RCW 18.130.160. Thus, even the assessment of fines primarily serves a remedial, rather than a punitive function. In addition, there is no general danger of prejudice with respect to future criminal proceedings, though in certain instances proceedings may involve conduct to which criminal liability may attach. The final consideration in *Ward*, the

overwhelming evidence of legislative intent, does not weigh appreciably in either direction in the present appeal.

Under the *Ward* factors these medical disciplinary proceedings on balance are best considered civil actions, not quasi-criminal. As such, they do not necessarily trigger the constitutional protections against compelled self-incrimination.[5] Subject to the limitation discussed in Section I.B below, the Board may sanction noncompliance with its valid questions and requests for documents. *See S.E.C. v. Colello*, 139 F.3d 674, 678 (9th Cir. 1998). The Board is also free to draw adverse inferences from a physician's refusal to testify or produce requested documents, as long as such adverse inferences are supported by some other evidence. *Diaz v. Wash. State Migrant Council*, 165 Wn. App. 59, 85, 265 P.3d 956 (2011), *Doe ex rel*

[5] Alsager directs our attention to cases in other states holding that professional disciplinary proceedings are sufficiently similar to criminal cases as to require the full criminal protections of the Fifth Amendment. In *State ex rel. Vining v. Florida Real Estate Commission*, the Supreme Court of Florida struck down a statute requiring realtors to make a sworn statement in professional disciplinary proceedings that were essentially "penal" in nature because they "tend[ed] to degrade the individual's professional standing, professional reputation or livelihood." 281 So.2d 487, 491 (1973). In *In re Woll*, 387 Mich. 154, 194 N.W.2d 835 (1972), the Supreme Court of Michigan held that Fifth Amendment protections are available in disbarment proceedings, basing that holding on earlier case law establishing that such proceedings are essentially punitive in nature. Both *Vining* and *Woll* were based in part on the United States Supreme Court's then-recent opinion in *Spevack*, 385 U.S. at 516-19, which held that the threat of disbarment for exercising one's Fifth Amendment rights constitutes compulsion. In both *Vining* and *Woll*, the courts seemed to read *Spevack* as suggesting that professional discipline was inherently punitive. 385 U.S. 516-19. No Washington court has construed *Spevack* so broadly, and the Court in *Spevack* declined to reach the question directly. 385 U.S. at 518-19. Given the difference in the relevant law in Florida and Michigan, we read *Vining* and *Woll* only as showing that professional disciplinary proceedings *may* be sufficiently criminal in nature to require constitutional protections against self-incrimination compelled by the threat of professional repercussions. The cases say nothing about whether Washington's UDA establishes proceedings that are sufficiently similar to criminal proceedings.

Rudy-Glanzer v. Glanzer, 232 F.3d 1258, 1264 (9th Cir. 2000). Because the Board also examined other evidence that Alsager improperly prescribed controlled substances in violation of its earlier order, it did not err in allowing adverse inferences from Alsager's refusal to testify or respond.

B. Invocation of Right in Civil Proceedings

We recognize, however, that testimony or other evidence compelled in a medical disciplinary proceeding could incriminate the practitioner in potential criminal prosecutions. In that situation, though, the practitioner must assert his rights through specific, individual objections, not by invoking blanket constitutional protection to avoid participating in the proceedings

One may assert Fifth Amendment rights in any proceeding, including civil and administrative proceedings. *Kastigar v United States*, 406 U.S. 441, 444, 92 S. Ct. 1653, 32 L. Ed 2d 212 (1972). Specifically, a party in a civil proceeding need not answer questions "where the answer might incriminate him in future criminal proceedings." *State v King*, 130 Wn.2d 517, 524, 925 P.2d 606 (1996).

However, in a civil proceeding, the right against testifying "necessarily attaches only to the question being asked and the information sought by that particular question." *Glanzer*, 232 F.3d at 1265. Therefore, a person invoking his Fifth Amendment right against self-incrimination to avoid testifying in a civil action must assert that right specifically in response to particular questions or requests for information. *Glanzer*, 232 F.3d at 1265 Alsager was not permitted to avoid all cooperation with the Board by asserting that right generally. *See Eastham v Arndt*, 28

Wn. App. 524, 532, 624 P.2d 1159 (1981); *see also Matter of Baun*, 395 Mich. 28, 37, 232 N.W.2d 621 (1975) (Michigan case in the line stemming from *Woll*). Because Alsager did not claim Fifth Amendment protections specifically or limit his assertion of the right to any particular topics, requests, or questions, he did not properly invoke it as to matters potentially related to criminal liability.

For the reasons above, these medical license revocation proceedings did not violate Alsager's Fifth Amendment rights.[6]

II. RIGHTS AGAINST UNREASONABLE SEARCH AND SEIZURE

Alsager argues that by searching the prescription monitoring program database for his prescription records and gathering those records from the database and pharmacies, the Board violated his federal and state constitutional rights to be free from unreasonable search and seizure.[7] He also argues that the statutes authorizing the search are facially unconstitutional.[8] We disagree.

The Fourth Amendment to the United States Constitution provides that

> [t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

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[6] With this conclusion, we do not need to address the Board's argument based on the required records doctrine.

[7] No party challenged Alsager's standing to make this claim. We assume without deciding that he has standing and proceed to the merits.

[8] The statutes Alsager asserts are unconstitutional are: RCW 18.130.050(7), .180(8), .230(1); RCW 70.02.050(2)(a); RCW 70.225.040(3).

U.S. CONST. amend. IV. Similarly, article I, section 7 of the Washington Constitution provides that "[n]o person shall be disturbed in his private affairs . . . without authority of law." WASH. CONST., art. I, § 7. This state provision is more broadly protective than is its federal counterpart. *State v. Hendrickson*, 129 Wn.2d 61, 69 fn. 1, 917 P.2d 563 (1996).

Our analysis of whether the Board violated both constitutional provisions is two-pronged: we must determine whether Alsager had a protected privacy interest in the prescription records held by the State or a third party, and if so, we must look to whether the Board's warrantless search of those records was constitutionally permissible. *See State v. Miles*, 160 Wn.2d 236, 243-44, 156 P.3d 864 (2007).

Turning first to the presence of a privacy interest, both the Fourth Amendment and article I, section 7 protect against government intrusion into one's private records. The Fourth Amendment protects a person's "subjective and reasonable expectation of privacy." *State v. Young*, 123 Wn.2d 173, 181, 867 P.2d 593 (1994) (citing *Katz v. United States*, 389 U.S. 347, 351-52, 88 S. Ct. 507, 19 L. Ed. 2d 576 (1967)). Article I, section 7 more broadly protects "those privacy interests which citizens of this state have held, and should be entitled to hold, safe from governmental trespass absent a warrant." *Id.* (citing *State v. Myrick*, 102 Wn.2d 506, 511, 688 P.2d 151 (1984)). Under each constitutional source, a search requires an intrusion within the perimeter of a protected privacy interest. *Young*, 123 Wn.2d at 181.

Division One of our court has held, in an opinion both our Supreme Court and the United States Supreme Court declined to review, that a patient has only a limited expectation of privacy in prescription records. *Murphy v. State*, 115 Wn. App. 297, 312-313, 62 P.3d 533 (2003). The

court noted that "constitutional privacy protections are not absolute," and where such prescription records are concerned they "must be balanced against the need for comprehensive and effective governmental oversight of prescription narcotic use and distribution." *Id.* at 308. As the court explained, Washington law has long required pharmacists to retain prescription records. *Id.* at 313. Due to this requirement and the controlled substances laws, patients should expect the government to "keep careful watch" over them and "should reasonably expect that their prescription records will be available to appropriate government agents, subject to safeguards against unauthorized further disclosure." *Id.* at 312-13.

Although the court in *Murphy* focused on prescription narcotics records, 115 Wn. App. at 307-08, its reasoning applies to prescription records of other scheduled controlled substances as well. RCW 18.64.245 (formerly codified at RCW 18.67.090) has long required pharmacists to keep all prescription records and make them available when lawfully required. Moreover, scheduled controlled substances have been subject to robust governmental regulation at the state and federal levels for decades, based on the danger they can pose to the public. *See, e.g.*, RCW 69.50.201-.214, .308, .401; 21 U.S.C. §§ 812, 841-65. As such, we must consider patients' general interest in privacy in light of "the State's vital interest in controlling the distribution of dangerous drugs." *Whalen v. Roe*, 429 U.S. 589, 598, 97 S. Ct. 869, 51 L. Ed. 2d 64 (1977). Considering that vital interest, patients should reasonably expect prescriptions for such records to be subject to some governmental scrutiny, "subject," as noted in *Murphy*, "to safeguards against unauthorized further disclosure" by officials. 115 Wn. App. at 313.

To the extent Alsager relies on the privacy interests of prescribing physicians as well, his argument founders on the authority just noted. Physicians, allowed by law to prescribe controlled substances under RCW 69.50.308, should be even more aware than patients that the government exercises tight regulatory oversight of these controlled substances.

Alsager argues that we should recognize a protected privacy interest, at least under article I, section 7, because two 19th century Washington statutes provided that pharmacists need not keep records of drugs distributed with a physician's prescription. These statutes established a general requirement that pharmacists keep records of the distribution of all potentially dangerous drugs for law enforcement inspection, but both included an exception for drugs prescribed by a physician. LAWS OF 1891, ch. 153, § 12; 1881 CODE OF THE TERRITORY OF WASHINGTON, § 936.

Neither of these statutes, however, *prohibited* pharmacists from keeping records of physicians' prescriptions. At most, these statutes show that physicians' prescription records have not always been subject to mandatory pharmacy recordkeeping requirements. However, as Division One noted in *Murphy*, there is a "long history of government scrutiny" over prescriptions. 115 Wn. App at 313. The statutes Alsager discusses do not establish that physicians have historically enjoyed any particular privacy interest in prescription records.

We adopt the reasoning and holding of *Murphy* and extend it to apply to prescribing physicians. We hold that prescription records kept under the prescription monitoring program, either by a pharmacist or as part of the state database, are not protected from all governmental examination by the Fourth Amendment or article I, section 7. Records of prescriptions for scheduled controlled substances are subject to legitimate oversight by appropriate agents of the

State if reasonably tailored to the enforcement of state law and if effective safeguards against unauthorized further disclosure are present. Acting under these constraints, the Department and the Board did not intrude into a zone of privacy protected by either the state or federal constitutions by the examination of Alsager's prescription records kept under the prescription monitoring program, whether in the state database or held by a pharmacist. Therefore, the Department and the Board did not violate either constitutional guarantee through this examination.

CONCLUSION

We affirm the Board's Final Order permanently revoking Alsager's license. The Board's proceedings did not deprive Alsager of any right against compelled self-incrimination, and the Department and the Board did not violate Alsager's right to be free from unreasonable searches and seizures when it examined Alsager's prescription records kept under the prescription monitoring program, whether in the state database or held by a pharmacist. Alsager's remaining legal challenges, discussed in the unpublished portion of this opinion, similarly do not persuade us that the Board erred.

A majority of the panel having determined that only the foregoing portion of this opinion will be printed in the Washington Appellate Reports and that the remainder shall be filed for public record pursuant to RCW 2.06.040, it is so ordered.

III. DECLARATORY JUDGMENT

Alsager argues that the superior court erred by dismissing his petition for declaratory judgment under the UDJA. We disagree.

RCW 7.24.146 clearly states that the UDJA "does not apply to state agency action reviewable under [the APA,] chapter 34.05 RCW." In such situations, declaratory judgment is instead available under the APA via the judicial review process. RCW 34.05.574(1). If an agency action is subject to judicial review under the provisions of the APA, it may not be preemptively decided by petition to a superior court for declaratory judgment. *Nw. Ecosystem All. v. Washington Dep't of Ecology* (*Nw. Ecosystem All. I*), 104 Wn. App. 901, 919, 17 P.3d 697 (2001), *rev'd in part, aff'd in part*, *Nw. Ecosystem All. v. Washington Forest Practices Bd.* (*Nw. Ecosystem All. II*), 149 Wn.2d 67, 66 P.3d 614 (2003).

Alsager claims that the Board's decision not to grant him a declaratory order was not reviewable under the APA and, therefore, that he properly sought declaratory judgment in the superior court under the UDJA. However, an agency's failure to act in the face of a duty to do so is reviewable under the APA. RCW 34.05.570(4)(b); *Nw. Ecosystem All. II*, 149 Wn.2d at 73-74. Therefore, to the extent the agency had any duty to issue a declaratory order related to the constitutionality of its application of the challenged statutes, its decision not to issue such an order was reviewable under the APA and was not subject to challenge under the UDJA. If the agency had no such duty to issue a declaratory order, then Alsager's avenue of as-applied constitutional challenge was through APA judicial review of the Board's Final Order following his exhaustion of administrative remedies. *See* RCW 34.05.534, .570(3)(a).

Alsager also argues that the superior court erred by requiring him to resort to and exhaust APA remedies when such remedies were futile and threatened irreparable harm to his constitutional rights. Where administrative remedies are inadequate, futile, or will result in grave and irreparable harm that clearly outweighs the public policy behind requiring exhaustion, a trial court may excuse the exhaustion requirement. RCW 34.05.534(3)(b)-(c). Because the Board has no authority to invalidate statutes on constitutional grounds, it was arguably futile for Alsager to wait for it to address the facial constitutionality of the challenged statutes. *Prisk v. City of Poulsbo*, 46 Wn. App. 793, 798, 732 P.2d 1013 (1987). However, even if we assume that the superior court abused its discretion by dismissing Alsager's facial challenges to the constitutionality of the statutes, we may affirm summary judgment on any grounds supported by the record before us. *Pac. Marine Ins. Co. v. State ex rel. Dep't of Revenue*, 181 Wn. App. 730, 737, 329 P.3d 101 (2014). Our consideration above of the merits of Alsager's constitutional claims shows that his facial constitutional challenges fail. Therefore, we hold that the superior court did not err in granting summary judgment and dismissing Alsager's UDJA claims.

IV. SUFFICIENCY OF THE BOARD'S FINDINGS AND CONCLUSIONS

In addition to the constitutional challenges that form the basis of most of his assignments of error, Alsager challenges one of the Board's findings of fact on grounds that it was not supported by substantial evidence, and three of the Board's conclusions of law on grounds that they were not supported by sufficient findings of fact or were legally erroneous. Each of these challenges fail.

We will reverse an administrative agency's order if the agency's findings are not supported by substantial evidence or its conclusions of law are legally erroneous or unsupported by the findings. *Campbell v Tacoma Pub. Sch.*, 192 Wn. App. 874, 887, 370 P.3d 33 (2016), *review denied*, 186 Wn.2d 1015; RCW 34.05.570(3). Substantial evidence is that necessary to "persuade a fair-minded person of the truth or correctness of the order." *Miotke v Spokane County*, 181 Wn. App. 369, 375-76, 325 P.3d 434, *review denied*, 181 Wn.2d 1010 (2014). We view the evidence in the light most favorable to the Board. *Id.* at 375

1. Sanction Finding 1.10

Alsager argues that sanction finding 1.10 "omits critical reference to the parties' Prehearing Stipulations set forth in Paragraph 2 thereof and specific findings of fact as to reasons and rationale that Dr. Alsager can never be rehabilitated or never regain the ability to practice safely." Br. of Appellant at 9. We hold that the omission is immaterial and the finding is supported by substantial evidence.

Sanction finding 1.10 reads:

> The Board previously determined in the 2008 Final Order that the restrictions on prescribing and retraining placed on the Respondent by the Order were necessary to protect the public and to rehabilitate the Respondent. The Board provided the Respondent with a rehabilitation plan that would allow him to remove the restriction. The evidence shows the Respondent began to violate the Final Order by issuing prescriptions for Schedule III controlled substances as early as September 17, 2008 and through at least February 15, 2013. The Panel finds the Respondent's conduct (the issuance of numerous Schedule III controlled substance prescriptions) shows a disregard of the 2008 Final Order. As a result, the Board finds there is no rehabilitation plan that will ensure the Respondent's compliance.

AR at 1711-12.

The prehearing stipulation to which Alsager refers was that "the issue of whether Dr. Alsager has completed the pain management course is disputed." AR at 1446. Both parties agreed not to provide evidence regarding the pain management course and Alsager's alleged participation in it.

Sanction finding 1.10 makes no reference to the pain management course at all, and therefore evidence of that course was unnecessary to support the finding. The finding required only evidence that Alsager issued prescriptions for Schedule III controlled substances during the time period described, despite the conditions imposed by the Board's 2008 order. The documentary evidence of the prescriptions obtained through the prescription monitoring program and pharmacies therefore was sufficient to support the finding. From that evidence, a fair-minded person would be persuaded that Alsager exhibited a disregard of the Board's order. Accordingly, we hold that sanction finding 1.10 was supported by substantial evidence.

2. Conclusions 2.7, 2.8, and 2.9

Alsager challenges the Board's conclusions in paragraphs 2.7 through 2.9 of the Final Order, arguing that the sanction of permanent license revocation was unauthorized and inappropriate. We hold that the conclusions were properly supported by the findings of fact and were not legally erroneous.

The Board's selection of appropriate sanctions for unprofessional conduct is governed by WAC 246-16-800, which is entitled "Sanctions – General Provisions." Subsection 2 of that rule states in pertinent part:

> (a) The disciplining authority will select sanctions to protect the public and, if possible, rehabilitate the license holder.

> (b) The disciplining authority may impose the full range of sanctions listed in RCW 18.130.160 for orders.
>
> . .
>
> (ii) Permanent revocation may be imposed when the disciplining authority finds the license holder can never be rehabilitated or can never regain the ability to practice safely.
>
> . . . .
>
> (c) The disciplining authority may deviate from the sanction schedules in these rules if the schedule does not adequately address the facts in a case. The disciplining authority will acknowledge the deviation and state its reasons for deviating from the sanction schedules in the order or stipulation to informal disposition.
>
> (d) If the unprofessional conduct is not described in a schedule, the disciplining authority will use its judgment to determine appropriate sanctions. The disciplining authority will state in the order or stipulation to informal disposition that no sanction schedule applies.

WAC 246-16-800(2).

This provision generally governs sanctions, whether or not in a sanction schedule. In turn, RCW 18.130.160 also discusses sanctions both under and apart from the sanction schedule, stating that "[t]he disciplining authority may order permanent revocation of a license if it finds that the license holder can never be rehabilitated or can never regain the ability to practice with reasonable skill and safety." This requirement therefore applies to sanctions outside of a sanction schedule. In fact, if it did not so apply, it would be robbed of most effect; since violation of a disciplinary order constitutes sanctionable unprofessional conduct under RCW 18.130.180(9), but is not described on any of the sanctioning schedules. *See* WAC 246-16-810 - 860. Therefore, to impose the sanctions it did against Alsager, the Board was required to use its judgment to determine whether Alsager can ever be rehabilitated or can ever regain the ability to practice safely

The Board's conclusions at issue read in relevant part:

> 2.7 . . .In determining appropriate sanctions, public safety must be considered before the rehabilitation of the Respondent. The conduct in this case is not described in a sanctioning schedule in chapter 246-16 WAC. Thus, the panel uses its judgment to determine sanctions. The Panel considered the violation of the 2008 Final Order . . . to be the primary violation requiring protection of the public In making its sanctioning decision, the Panel considered the pattern of the Respondent's egregious violation of the 2008 Final Order in particular The Panel concludes the Respondent cannot be rehabilitated. The Board Panel did not reach this decision lightly and considered whether there was any lesser sanction that would protect the public in this case.
>
> 2.8 . The Board previously determined in the 2008 Final Order that the restrictions on prescribing and retraining placed on Respondent by [the earlier] Orders were necessary to protect the public and to rehabilitate the Respondent, yet the Respondent began to violate the 2008 Final Order even during the original period of summary restriction. The Panel concludes that retraining, restriction, and oversight have failed to rehabilitate the Respondent's conduct and that there is no lesser sanction than permanent revocation that can adequately protect the public, given the Respondent's repeated unwillingness to comply with the Boards' [*sic*] Orders.
>
> 2.9 The aggravating factors supporting the permanent revocation include the violation of the 2008 Final Order, the length of time the Respondent was violating the 2008 Final Order, the number of violations of the 2008 Final Order, and the seriousness of the underlying standard of care violations for which these sanctions were imposed. There were no mitigating factors considered.

AR 1713-15 (internal citations omitted)

Alsager argues that

> in order to impose the ultimate sanction of professional license revocation with absolutely no opportunity ever for reinstatement, it is mandatory that the Board make and enter specific findings of fact as to reasons and rationale that Dr. Alsager can never be rehabilitated or never regain the ability to practice safely.

Br. of Appellant at 48. In fact, WAC 246-18-800 does not include any such requirement regarding the Board's "reasons and rationale," although, as noted, it does require that the Board find that the license holder can never be rehabilitated or can never regain the ability to practice

safely before permanently revoking a license. The challenged conclusions set out above effectively make these findings and can be considered as such even though labeled as conclusions of law. *State v. Federov*, 183 Wn. App. 736, 744, 335 P.3d 971 (2014). The same conclusions also describe the Board's reasoning in detail. More importantly, those conclusions are supported by findings of fact describing the conditions imposed by the 2008 Final Order and numerous prescriptions Alsager wrote in violation of those conditions.

Alsager also argues that the Board erred by considering aggravating factors without considering any mitigating factors. WAC 246-16-800(3) requires the Board to consider both aggravating and mitigating factors when imposing sanctions *according to the sanctioning schedules*. However, as noted above, violation of a disciplinary order is not covered by any of those sanctioning schedules, and therefore under WAC 246-16-800(2)(d) the Board was charged with "us[ing] its judgment to determine appropriate sanctions." Because the evidence showed, and the Board found, a lengthy and continual pattern of violation of the 2008 order, it did not err by not considering mitigating factors.

V. DISQUALIFICATION OF BOARD MEMBER FROM PANEL

Alsager appeals the denial of his motion to disqualify one of the members of the Board panel that judged his case on the basis of a personal business interest in the revocation of Alsager's license. We hold that Alsager failed to show that the panel member held any bias or conflicting professional interest and that the Board did not abuse its discretion in denying the motion to disqualify.

Under the appearance of fairness doctrine, a decision-maker in a quasi-judicial proceeding is disqualified and must recuse if a party shows that he or she has "'apparent conflicts of interest creating an appearance of unfairness or partiality.'" *In re Disciplinary Proceeding Against Petersen*, 180 Wn.2d 768, 785, 329 P.3d 853 (2014) (quoting *City of Hoquiam v. Pub. Empl't Relations Comm'n*, 97 Wn.2d 481, 488, 646 P.2d 129 (1982)). Barring a "clear and nondiscretionary duty to recuse," we review for an abuse of discretion a decision-maker's denial of a motion to recuse. *Faghih v. Washington State Dep't of Health, Dental Quality Assurance Comm'n*, 148 Wn. App. 836, 843, 202 P.3d 962 (2009). We presume that the Board members acted and performed their duties properly. *City of Hoquiam*, 97 Wn.2d at 489.

Alsager claims that one of the Board members should have been disqualified because she practiced osteopathic medicine in the Maple Valley area, where Alsager also practiced, and therefore stood to potentially gain a competitive advantage from revocation of his license. Recusal is necessary if a panel member has a "substantial pecuniary interest" in the outcome of the case. *Gibson v. Berryhill*, 411 U.S. 564, 579, 93 S. Ct. 1689, 36 L. Ed. 2d 488 (1973). However, the only evidence Alsager provided was a newspaper article showing that the panel member was the medical director of a medical center in Maple Valley. This evidence, without more, shows at best a highly attenuated pecuniary interest in removing Alsager from practice. It shows neither that the member was a direct competitor nor that she stood to gain business; it shows only that she worked in geographic proximity to Alsager. It establishes no apparent bias or conflict of interest and is insufficient to overcome the presumption that the panel acted appropriately. The Board did not abuse its discretion by denying Alsager's motion for recusal.

VI. AUTHENTICATION OF PRESCRIPTION RECORDS

Alsager argues that the Board erred by admitting records from the prescription monitoring program because those records were not properly authenticated. We hold that any such error was harmless.

Under the APA, "[e]vidence, including hearsay evidence, is admissible if in the judgment of the presiding officer it is the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of their affairs." RCW 34.05.452(1). Under the procedural regulations applicable to Board proceedings,

> (5) [f]ollowing the final prehearing conference, the presiding officer shall issue a written prehearing order which will:
> . . . .
> (c) Identify those documents and exhibits that will be admitted at hearing and those which may be distributed prior to hearing;
> . . . .
> (e) Rule on motions.

WAC 246-11-390(5). At the hearing, "[t]he presiding officer shall rule on objections to the admissibility of evidence pursuant to RCW 34.05.452 unless those objections have been addressed in the prehearing order." WAC 246-11-490(1). Administrative decision-makers have "considerable discretion" when ruling on evidentiary matters, and we review those rulings for an abuse of discretion. *Univ. of Wash. Med. Ctr. v. Wash. State Dep't of Health*, 164 Wn.2d 95, 104, 187 P.3d 243 (2008).

Alsager made a prehearing motion to exclude the prescription records, challenging their authentication among other matters. In prehearing orders, the Board denied the motion and declined to reconsider it, but did not expressly address the authentication argument. At the

hearing, Alsager again argued that the records were not properly authenticated, but the presiding officer ruled that the evidence was admitted pursuant to the prehearing orders.

Even if the presiding officer erred by failing to address whether the records were adequately authenticated, any such error was harmless. "An erroneous evidentiary ruling is not grounds for reversal absent prejudicial error." *Cook v. Tarbert Logging, Inc* , 190 Wn. App. 448, 474, 360 P.3d 855 (2015), *review denied*, 185 Wn.2d 1014 (2016). The investigator testified that the prescription records were customarily used by the Department, monitored under the prescription monitoring program, connected to Alsager's registration with the federal Drug Enforcement Agency, and signed with a signature the investigator recognized as Alsager's. Thus, the testimony at the hearing established that the records are the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of their affairs. Given this uncontested evidence, the records were adequately authenticated and properly admitted by the Board.

We affirm the Board's permanent revocation of Alsager's license to practice medicine.

BJORGEN, C.J.

We concur:

WORSWICK, J.

LEE, J.

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

DALE E ALSAGER, D.O., Ph.D. Appellant, v. BOARD OF OSTEOPATHIC MEDICINE AND SURGERY, DEPARTMENT OF HEALTH, STATE OF WASHINGTON, Respondents.	No. 47367-4-II ORDER DENYING MOTION TO PUBLISH PART III OF OPINION

APPELLANT moves this Court to publish Part III (Declaratory Judgment) of its Part Published Opinion dated November 15, 2016. Upon consideration, the motion is denied

Accordingly, it is

SO ORDERED.

PANEL: Jj Bjorgen, Worswick, Lee

DATED this 18th day of November, 2016

FOR THE COURT:

Bjorgen, C.J.
CHIEF JUDGE

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U.S. Constitution

Amendment IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized

Amendment V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment XIV

Section 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2.

Representatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state, excluding Indians not taxed But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the executive and judicial officers of a state, or the members of the legislature thereof, is denied to any of the male inhabitants of such state, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such state.

Section 3.

No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the

United States, or under any state, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any state legislature, or as an executive or judicial officer of any state, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof But Congress may by a vote of two-thirds of each House, remove such disability

Section 4.

The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any state shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void

Section 5

The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

Washington State Constitution

ARTICLE I DECLARATION OF RIGHTS

SECTION 2 SUPREME LAW OF THE LAND The Constitution of the United States is the supreme law of the land

SECTION 3 PERSONAL RIGHTS. No person shall be deprived of life, liberty, or property, without due process of law.

SECTION 7 INVASION OF PRIVATE AFFAIRS OR HOME PROHIBITED. No person shall be disturbed in his private affairs, or his home invaded, without authority of law.

SECTION 9 RIGHTS OF ACCUSED PERSONS No person shall be compelled in any criminal case to give evidence against himself, or be twice put in jeopardy for the same offense.

SECTION 29 CONSTITUTION MANDATORY. The provisions of this Constitution are mandatory, unless by express words they are declared to be otherwise

WASHINGTON STATE STATUTES (RCW)

RCW 18.130.050 Authority of disciplining authority.

Except as provided in RCW 18.130.062, the disciplining authority has the following authority:

(7) In the course of investigating a complaint or report of unprofessional conduct, to conduct practice reviews and to issue citations and assess fines for failure to produce documents, records, or other items in accordance with RCW 18.130.230;

RCW 18.130.095 Uniform procedural rules.

(2) The uniform procedures for conducting investigations shall provide that prior to taking a written statement:

> (a) For violation of this chapter, the investigator shall inform such person, in writing of: (i) The nature of the complaint, (ii) that the person may consult with legal counsel at his or her expense prior to making a statement; and (iii) that any statement that the person makes may be used in an adjudicative proceeding conducted under this chapter

RCW 18.130.100 Hearings – Adjudicative proceedings under chapter 34.05 RCW.

The procedures governing adjudicative proceedings before agencies under chapter 34.05 RCW, the Administrative Procedure Act, govern all hearings before the disciplining authority. The disciplining authority has, in addition to the powers and duties set forth in this chapter, all of the powers and duties under chapter 34.05 RCW, which include, without limitation, all powers relating to the administration of oaths, the receipt of evidence, the issuance and enforcing of subpoenas, and the taking of depositions

RCW 18.130.160 Finding of unprofessional conduct — Orders — Sanctions — Stay — Costs — Stipulations.

Upon a finding, after hearing, that a license holder has committed unprofessional conduct or is unable to practice with reasonable skill and safety due to a physical or mental condition, the disciplining authority shall issue an order including sanctions adopted in accordance with the schedule adopted under RCW 18.130.390 giving proper consideration to any prior findings of fact under RCW 18.130.110, any stipulations to informal disposition under RCW 18.130.172, and any action taken by other in-state or out-of-state disciplining authorities. The order must provide for one or any combination of the following, as directed by the schedule:

(1) Revocation of the license,

(2) Suspension of the license for a fixed or indefinite term;

(3) Restriction or limitation of the practice,

(4) Requiring the satisfactory completion of a specific program of remedial education or treatment;

(5) The monitoring of the practice by a supervisor approved by the disciplining authority;

(6) Censure or reprimand,

(7) Compliance with conditions of probation for a designated period of time,

(8) Payment of a fine for each violation of this chapter, not to exceed five thousand dollars per violation. Funds received shall be placed in the health professions account;

(9) Denial of the license request,

(10) Corrective action;

(11) Refund of fees billed to and collected from the consumer,

(12) A surrender of the practitioner's license in lieu of other sanctions, which must be reported to the federal data bank

Any of the actions under this section may be totally or partly stayed by the disciplining authority. Safeguarding the public's health and safety is the paramount responsibility of every disciplining authority In determining what action is appropriate, the disciplining authority must consider the schedule adopted under RCW 18.130.390. Where the schedule allows flexibility in determining the appropriate sanction, the disciplining authority must first consider what sanctions are necessary to protect or compensate the public. Only after such provisions have been made may the disciplining authority consider and include in the order requirements designed to rehabilitate the license holder. All costs associated with compliance with orders issued under this section are the obligation of the license holder. The disciplining authority may order permanent revocation of a license if it finds that the license holder can never be rehabilitated or can never regain the ability to practice with reasonable skill and safety.

Surrender or permanent revocation of a license under this section is not subject to a petition for reinstatement under RCW 18.130.150.

The disciplining authority may determine that a case presents unique circumstances that the schedule adopted under RCW 18 130 390 does not adequately address. The disciplining authority may deviate from the schedule adopted under RCW 18.130 390 when selecting appropriate sanctions, but the disciplining authority must issue a written explanation of the basis for not following the schedule.

RCW 18.130.180 Unprofessional conduct.

The following conduct, acts, or conditions constitute unprofessional conduct for any license holder under the jurisdiction of this chapter.

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

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

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

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

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

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

RCW 18.130.230 Production of documents — Administrative fines.

(1) (a) A licensee must produce documents, records, or other items that are within his or her possession or control within twenty-one calendar days of service of a request by a disciplining authority. If the twenty-one calendar day limit results in a hardship upon the licensee, he or she may request, for good cause, an extension not to exceed thirty additional calendar days.

(b) In the event the licensee fails to produce the documents, records, or other items as requested by the disciplining authority or fails to obtain an extension of the time for response, the disciplining authority may issue a written citation and assess a fine of up to one hundred dollars per day for each day after the issuance of the citation until the documents, records, or other items are produced.

(c) In no event may the administrative fine assessed by the disciplining authority exceed five thousand dollars for each investigation made with respect to the violation

RCW 34.05.020 Savings — Authority of agencies to comply with chapter — Effect of subsequent legislation.

Nothing in this chapter may be held to diminish the constitutional rights of any person or to limit or repeal additional requirements imposed by statute or otherwise recognized by law. Except as otherwise required by law, all requirements or privileges relating to evidence or procedure shall apply equally to agencies and persons. Every agency is granted all authority necessary to comply with the requirements of this chapter through the issuance of rules or

otherwise. No subsequent legislation shall be held to supersede or modify the provisions of this chapter or its applicability to any agency except to the extent that such legislation shall do so expressly

RCW 34.05.452 Rules of evidence – Cross-examination

(1) Evidence, including hearsay evidence, is admissible if in the judgment of the presiding officer it is the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of their affairs The presiding officer shall exclude evidence that is excludable on constitutional or statutory grounds or on the basis of evidentiary privilege recognized in the courts of this state. The presiding officer may exclude evidence that is irrelevant, immaterial, or unduly repetitious

(2) If not inconsistent with subsection (1) of this section, the presiding officer shall refer to the Washington Rules of Evidence as guidelines for evidentiary rulings

RCW 34.05.570 Judicial review.

(1) Generally Except to the extent that this chapter or another statute provides otherwise:

(a) The burden of demonstrating the invalidity of agency action is on the party asserting invalidity;

(b) The validity of agency action shall be determined in accordance with the standards of review provided in this section, as applied to the agency action at the time it was taken,

(c) The court shall make a separate and distinct ruling on each material issue on which the court's decision is based; and

(d) The court shall grant relief only if it determines that a person seeking judicial relief has been substantially prejudiced by the action complained of.

(3) Review of agency orders in adjudicative proceedings. The court shall grant relief from an agency order in an adjudicative proceeding only if it determines that:

(a) The order, or the statute or rule on which the order is based, is in violation of constitutional provisions on its face or as applied;

(b) The order is outside the statutory authority or jurisdiction of the agency conferred by any provision of law;

(c) The agency has engaged in unlawful procedure or decision-making process, or has failed to follow a prescribed procedure,

(d) The agency has erroneously interpreted or applied the law;

(e) The order is not supported by evidence that is substantial when viewed in light of the whole record before the court, which includes the agency record for judicial review, supplemented by any additional evidence received by the court under this chapter,

(f) The agency has not decided all issues requiring resolution by the agency;

(g) A motion for disqualification under RCW 34.05.425 or 34.12.050 was made and was improperly denied or, if no motion was made, facts are shown to support the grant of such a motion that were not known and were not reasonably discoverable by the challenging party at the appropriate time for making such a motion.

(h) The order is inconsistent with a rule of the agency unless the agency explains the inconsistency by stating facts and reasons to demonstrate a rational basis for inconsistency; or

(i) The order is arbitrary or capricious.

RCW 70.02.050 Disclosure without patient's authorization – Need-to-know basis.

(2) A health care provider shall disclose health care information, except for information and records related to sexually transmitted diseases, unless otherwise authorized in RCW 70 02.220, about a patient without the patient's authorization if the disclosure is:

(a) To federal, state, or local public health authorities, to the extent the health care provider is required by law to report health care information; when needed to determine compliance with state or federal licensure, certification or registration rules or laws, or to investigate unprofessional conduct or ability to practice with reasonable skill and safety under chapter 18.130 RCW. Any health care information obtained under this subsection is exempt from public inspection and copying pursuant to chapter 42 56 RCW.

RCW 70.225.040 Confidentiality of prescription information – Procedures – Immunity when acting in good faith

(1) Prescription information submitted to the department shall be confidential, in compliance with chapter 70 02 RCW and federal health care information privacy requirements and not subject to disclosure, except as provided in subsections (3) and (4) of this section.

(2) The department shall maintain procedures to ensure that the privacy and confidentiality of patients and patient information collected, recorded, transmitted, and maintained is not disclosed to persons except as in subsections (3) and (4) of this section.

(3) The department may provide data in the prescription monitoring program to the following persons:

(a) Persons authorized to prescribe or dispense controlled substances, for the purpose of providing medical or pharmaceutical care for their patients;

(b) An individual who requests the individual's own prescription monitoring information;

(c) Health professional licensing, certification, or regulatory agency or entity,

(d) Appropriate local, state, and federal law enforcement or prosecutorial officials who are engaged in a bona fide specific investigation involving a designated person,

(e) Authorized practitioners of the department of social and health services and the health care authority regarding medicaid program recipients;

(f) The director or director's designee within the department of labor and industries regarding workers' compensation claimants;

(g) The director or the director's designee within the department of corrections regarding offenders committed to the department of corrections;

(h) Other entities under grand jury subpoena or court order; and

(i) Personnel of the department for purposes of administration and enforcement of this chapter or chapter 69.50 RCW.

(4) The department may provide data to public or private entities for statistical, research, or educational purposes after removing information that could be used to identify individual patients, dispensers, prescribers, and persons who received prescriptions from dispensers

(5) A dispenser or practitioner acting in good faith is immune from any civil, criminal, or administrative liability that might otherwise be incurred or imposed for requesting, receiving, or using information from the program.

WASHINGTON ADMINISTRATIVE CODE (WAC)

WAC 10-08-220 Other law

Nothing in chapter 10-08 WAC is intended to diminish the constitutional rights of any person or to limit or modify additional requirements imposed by statute, including the Administrative Procedure Act

WAC 246-16-800 Sanctions – General provisions

(1) Applying these rules.

(a) The disciplining authorities listed in RCW 18.130.040(2) will apply these rules to determine sanctions imposed for unprofessional conduct by a license holder in any active, inactive, or expired status. The rules do not apply to applicants.

(b) The disciplining authorities will apply the rules in.

(i) Orders under RCW 18.130.110 or 18.130 160; and

(ii) Stipulations to informal disposition under RCW 18.130 172

(c) Sanctions will begin on the effective date of the order

(2) Selecting sanctions.

(a) The disciplining authority will select sanctions to protect the public and, if possible, rehabilitate the license holder.

(b) The disciplining authority may impose the full range of sanctions listed in RCW 18.130.160 for orders and RCW 18.130.172 for stipulations to informal dispositions.

(i) Suspension or revocation will be imposed when the license holder cannot practice with reasonable skill or safety.

(ii) Permanent revocation may be imposed when the disciplining authority finds the license holder can never be rehabilitated or can never regain the ability to practice safely.

CODE OF WASHINGTON

CONTAINING ALL

ACTS OF A GENERAL NATURE

REVISED AND AMENDED BY THE LEGISLATIVE ASSEMBLY OF THE TERRITORY OF WASHINGTON, DURING THE EIGHTH BIENNIAL SESSION, AND THE EXTRA SESSION, ENDING DECEMBER 7, 1881; THE CONSTITUTION OF THE UNITED STATES AND AMENDMENTS THERETO; THE ACTS OF CONGRESS APPLICABLE TO THE TERRITORY OF WASHINGTON; AND THE NATURALIZATION LAWS.

Published by Authority.

OLYMPIA:
C. B. BAGLEY, PUBLIC PRINTER.
1881.

receive or keep any public money, shall willfully neglect or refuse to pay over such money at the time prescribed by law, or shall willfully refuse to pay any warrant lawfully drawn, or shall pay over a less valuable kind of money than that collected or received by him, or scrip, or county or territorial orders in lieu of money so collected or received by him in any sum whatever, he shall, on conviction thereof, be imprisoned in the county jail not exceeding one year nor less than one month, or be fined in any sum not exceeding five thousand dollars, or both

Sec. 891. If any auditor shall knowingly issue any warrant not authorized by law, he shall, on conviction thereof, be imprisoned in the county jail not exceeding one year, and be fined in any sum not exceeding one thousand dollars, or be fined only.

Sec. 892 Every person who shall officiate in any place of authority, without being legally authorized, shall be deemed guilty of usurpation, and upon conviction thereof, be fined in any sum not exceeding one thousand dollars.

Sec. 893. If any person elected or appointed to an office, or his deputy, shall perform any of the duties of such office, without having taken an oath as prescribed by law, or before having given and filed the bond required of him, and in the manner prescribed by law, he shall, upon conviction thereof, be fined in any sum not exceeding one thousand dollars.

Sec. 894 If any officer, whose fees are stated by law, shall corruptly exact or extort any greater fees for any services than by law are stated and allowed, or shall levy, demand, receive, or take under color of his office, any bond, bill or note, or other assurance or promise whatever, securing the payment of a greater sum of money for any service than he is by law authorized to demand or receive, he shall, on conviction thereof, be imprisoned in the county jail not exceeding one year, and be fined in any sum not exceeding one thousand dollars.

Sec 895 It shall be the duty of all county school superintendents and school directors to make complaint in all cases which shall come to their knowledge of a criminal violation of the laws relating to schools and education. It shall be the duty of road supervisors to make complaint in all cases which shall come to their knowledge of a criminal violation of the laws relating to roads and highways It shall be the duty of all constables and sheriffs to make complaint of all violations of the criminal law which shall come to their knowledge within their respective jurisdictions

Sec. 896. Any officer who shall willfully and knowingly violate or refuse to perform the duty imposed by section 895 shall be guilty of a misdemeanor, and, on conviction thereof, be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or by imprisonment in the county jail for not less than one month nor more than six months, or by fine and imprisonment, in the discretion of the court having jurisdiction thereof.

Sec. 897. A conviction of any officer, under the foregoing section, shall operate as a vacation of the office of the officer so convicted, and the office so vacated shall be filled in accordance with law.

CHAPTER LXXIII.

OFFENSES AGAINST PUBLIC POLICY.

Sec. 898. Every person who shall erect, or continue and maintain any public nuisance, to the injury of any part of the citizens of this territory, shall, upon conviction thereof, be fined in any sum not exceeding one thousand dollars.

Sec 899. If any person shall maliciously, without probable cause, attempt to cause an indictment to be found, or other prosecution for any crime or misdemeanor, to be commenced against any person, or if two or more persons shall conspire together for that purpose, the person so sought to be indicted or otherwise prosecuted being innocent, such person or persons so offending shall, on conviction thereof, be imprisoned in the county jail not exceeding six months, and be fined in any sum not exceeding one thousand dollars

Sec. 900. Every person who shall, by himself or agent, transact any business, or do any act, without a license therefor, where such license is required by any law in this territory, shall, on conviction thereof, be fined in any sum not exceeding five hundred dollars, and in all such cases where the principal is prosecuted, his agent may be compelled to testify; and when the agent is prosecuted, the principal may be compelled to testify.

Sec. 901. Every person who shall excite quarrels or law-suits among the citizens of this territory, shall be deemed a common barrator, and, upon conviction thereof, shall be imprisoned in the county jail any length of time not exceeding six months, and be fined in any sum not exceeding five hundred dollars, or fined only

Sec. 902. If any person shall fraudulently cause, or attempt to cause, any elector, at any election pursuant to law in this territory, to vote for a person different from the one he intended to vote for, such person so offending shall be fined not more than one hundred, nor less than ten dollars.

Sec. 903. If any elector shall vote or attempt to vote more than once at any election, or shall knowingly hand in two or more tickets together, or having voted in one township, precinct or county, shall afterwards, on the same day, vote or attempt to vote in another township, precint or county, such person shall be fined in any sum not exceeding fifty dollars,

his place, or off his own premises, or sell, trade, or offer for sale or trade any such horse, mule or ass, knowing the same to be so diseased, he shall be deemed guilty of a misdemeanor, and shall, on conviction, be punished by a fine of not less than fifty dollars nor more than five hundred dollars; and if any horse, mule, or ass, reasonably supposed to be diseased with nasal gleet, glanders or button farcy, be found running at large without any known owner, it shall be lawful for the finder thereof to take such horse, mule or ass, so found, before some justice of the peace, who shall forthwith cause the same to be examined by some veterinary surgeon, or other person skilled in such diseases, and if, on examination, it is ascertained to be so diseased, it shall be lawful for such justice of the peace to order such diseased animal to be immediately destroyed and buried; and the necessary expense accruing under the provisions of this section shall be defrayed out of the county treasury

SEC 934 If any person having knowledge of the commission of any crime, shall take any money, gratuity, reward, or any engagement therefor, upon an agreement or understandig, express or implied, to compound or conceal such crime, or not to prosecute therefor, he shall, on conviction thereof, be imprisoned in the county jail for any length of time not exceeding one year, or be fined in any sum not exceeding one thousand dollars.

SEC. 935. It shall be unlawful for any druggist, or other person to sell, give, or in any manner furnish to any Indian, minor, intoxicated person, or person of unsound mind, any poisonous drug, or compound, destructive of human or animal life

SEC 936. Every druggist shall keep a book in which he shall register the name of any person purchasing or receiving from him any such poisonous drug or compound, unless the same shall be furnished upon the prescription of a competent physician, together with the name of such drug or compound, and the time when it was furnished

SEC 937. Every person who shall place any poison outside of his own building, or out buildings, for the destruction of noxious animals, or for any purpose whatever, shall give notice to all persons, or families residing within one mile of the place where such poison is used, by posting notices in three of the most public places within one mile of where said poison is to be put out, but this notice shall not apply to such use of poison within the limits of an incorporate town.

SEC. 938 Every person violating any of the provisions of sections 935, 936 and 937, shall be fined in any sum not exceeding five hundred dollars, and may be imprisoned until the fine and costs are paid

SEC 939 Every person who shall knowingly sell or give to a minor, intoxicating or spirituous liquors, without the written permission of the parent or guardian of such minor, shall on conviction thereof, be fined in any sum not exceeding five hundred dollars, or be imprisoned in the county jail for a term not exceeding three months, or both.

SEC. 940. Any minor over the age of eighteen years and under the age of twenty one years, who shall represent to any person dealing in spirituous, malt or fermented liquors, that he is of lawful age, and by means of such misrepresentation procure from such dealer spirituous, malt or fermented liquors, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined in any sum not exceeding one hundred dollars nor less than twenty-five dollars, or imprisoned in the county jail any length of time not exceeding three months

SEC. 941. If any person shall allow any minor to play at cards in his house, without the written permission of the parent or guardian, he shall be liable to the same penalties as for furnishing to such minor spirituous liquors, as mentioned in section 940

SEC. 942. Any tavern keeper, grocery keeper, brewer, distillers, or person or persons, Indian or Indians, who shall sell, barter, give, or in any manner dispose of any wines, spirituous liquors, ale, beer, porter, cider, or any other intoxicating beverage, to any Indian or Indians, within this territory, every such person so offending shall be deemed guilty of a misdemeanor, and upon conviction thereof, by any court having competent jurisdiction to try the same, shall forfeit and pay to the use of the county in which the offense may have been committed, a fine of not less than twenty-five dollars and not more than one hundred dollars for each and every offense, and in all prosecutions under this section, Indians shall be competent as witnesses.

CHAPTER LXXIV.

OFFENSES AGAINST MORALITY AND DECENCY.

SEC. 943. Every person who shall live in open and notorious adultery or fornication, shall, upon conviction thereof be imprisoned in the county jail not exceeding two years, or be fined in any sum not exceeding five hundred dollars, or fined only

SEC. 944. Every person who commits the crime of adultery, shall be punished by imprisonment in the penitentiary not more than three years, or by fine not exceeding three hundred dollars and imprisonment in the county jail not exceeding one year; and when the crime is committed between parties only one of whom is married, both are guilty of adultery and shall be punished accordingly.

SEC. 945. If any person who has a former husband or wife living, marry another person, or continue to cohabit with such second husband or wife in this territory, he or she, except in the cases mentioned in the following section, is guilty of bigamy and shall be punished by imprisonment in the penitentiary not more than five years, or by fine not exceeding five hundred dollars and imprisonment in the county jail not more than one year

SEC. 946. The provisions of the preceding section do not extend to any person whose husband or wife has continually remained beyond seas or who has voluntarily withdrawn from the other and remained absent for the space of five years together, the party marrying again not knowing the other to be living within that time; nor to any person who has good reason to believe such husband or wife to be dead; nor to any person who has been legally divorced from the bonds of matrimony.

SEC. 947. Every unmarried person who knowingly marries the husband

SESSION LAWS

OF THE

STATE OF WASHINGTON

SESSION OF 1891.

COMPILED IN CHAPTERS, WITH MARGINAL NOTES,
BY ALLEN WEIR, SECRETARY OF STATE.

PUBLISHED BY AUTHORITY.

OLYMPIA, WASH.:
O. C. WHITE, STATE PRINTER
1891

CHAPTER CLIII.

[S. B. No 19]

TO REGULATE THE PRACTICE OF PHARMACY.

AN ACT to regulate the practice of pharmacy, the licensing of persons to carry on such practice, and the sale of poisons, in the State of Washington.

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

SECTION 1. That it shall hereafter be unlawful for any person other than a registered pharmacist to retail, compound or dispense drugs, medicines or poisons, or to institute any pharmacy, store or shop for retailing, compounding or dispensing drugs, medicines or poisons, unless such person shall be a registered pharmacist, or shall place in charge of said store a registered pharmacist, except as hereinafter provided.

Qualifications.

SEC. 2. In order to be registered, all persons must be either graduates in pharmacy, or shall, at the time this act takes effect, be engaged in the business of a dispensing pharmacist on their own account in the State of Washington, the preparation of physicians' prescriptions, and the vending and compounding of drugs, medicines and poisons, or shall be licentiates in pharmacy.

SEC. 3. Graduates in pharmacy shall be considered to consist of such persons as have had four years' practical experience in drug stores where prescriptions of medical practitioners are compounded, and have obtained a diploma from such college or schools of pharmacy as shall be approved by the board of pharmacy, as sufficient guarantee of their attainment and proficiency.

Qualifications of licentiates.

SEC. 4. Licentiates in pharmacy shall be such persons as shall have had three years' practical experience in drug stores wherein the prescriptions of medical practitioners are compounded, and have sustained a satisfactory examination before the state board of pharmacy hereinafter mentioned. The state board may grant certificates of registration to licentiates of such other state boards as it may deem proper, without further examination.

State board of pharmacy.

SEC. 5. As soon as this act shall take effect the Washington state pharmaceutical association shall elect fifteen

by examination shall pay to said secretary the sum of five dollars before such examination be attempted: *Provided*, That in case the applicant fail to pass a satisfactory examination, the money shall be held to his credit for a second examination at any time within a year. Fees.

SEC. 10. Every registered pharmacist, during the times he continues such practice of his profession, shall annually, on such date as the board of pharmacy may determine, pay to the said secretary of said board of registration a fee of two dollars in return for which payment he shall receive a renewal of said registration. Every certificate and every renewal shall be conspicuously displayed in the pharmacy to which it applies. Renewal fees.

SEC. 11. The secretary of the board of pharmacy shall receive a salary, which salary shall be determined by said board; he shall also receive his traveling and other expenses incurred in the performance of his official duties. The other members of said board shall receive the sum of five dollars for each day actually engaged in such service, and all legitimate and necessary expenses incurred in attending the meetings of said board. Said expenses shall be paid from the fees and penalties received by said board under the provisions of this act, and no part of the salary or other expenses of said board, under the provisions of this act, shall be paid out of the public treasury. All moneys received by said board in excess of said allowances and other expenses hereinbefore provided for shall be held by the secretary of the said board as a special fund for meeting the expenses of said board, said secretary giving such bonds as the said board shall, from time to time, direct. The said board shall, in its annual report to the governor and to the Washington state pharmaceutical association, render an account of all money received and disbursed by them pursuant to this act. Salary of secretary of state board. Compensation of members of state board. Special fund. Annual report.

SEC. 12. The proprietor of every drug store shall keep in his place of business a registry book in which shall be entered an accurate record of the sales of all mineral acids, carbolic acid, oxalic acid, hydrocyanic acid, cyanide of potassa, arsenic and its preparations, corrosive sublimate, red precipitate, preparations of opium (except paregoric), Prescriptions.

phosphorus, nux vomica and strychnine, aconite, belladonna, hellebore and their preparations, croton oil, oil savin, oil tansy, creosote, wines and spirituous or malt liquors. Said record shall state amount purchased, the date, for what purpose used, buyer's name and address, and said record shall at all times, during business hours, be subject to the inspection of the prosecuting attorney, or to any authorized agent of the board of pharmacy: *Provided*, That no such wines, spirituous or malt liquors shall be sold for other than medicinal, scientific, mechanical or sacramental purposes. Furthermore, that all poisons shall be plainly labeled as such, and that such labels shall also bear the name and address of the druggist selling the same. The provisions of this section shall not apply to dispensing by physicians' prescriptions.

SEC. 13. Any person not being a registered pharmacist within the full meaning of this act who shall, after the expiration of sixty days from the time this act shall take effect, retail, compound or dispense medicines, or who shall take, use or exhibit the title of registered pharmacist shall, for each and every said offense, be liable to a penalty of fifty dollars. Any registered pharmacist or other person who shall permit the compounding and dispensing of prescriptions or the vending of drugs, medicines or poisons in his store or place of business, except under the supervision of a registered pharmacist, or except by a registered assistant, or any pharmacist or registered assistant who, while continuing in business, shall fail or neglect to procure his annual registration, or any person who shall willfully make any false representations to procure registration for himself or any other person, or who shall violate any of the provisions of this act shall, for each and every offense, be liable to a penalty of fifty dollars: *Provided*, That nothing in this act shall in any manner interfere with the business of any physician in regular practice, or prevent him from supplying to his patients such articles as he may deem proper, nor with the making of proprietary medicine or medicines placed in sealed packages; nor prevent shop keepers from dealing in and selling the commonly used medicines and poisons, if such medicines and

Penalty for illegally doing business, or for fraud

Penalty

SEC. 3. For each and every violation of any of the provisions of this act the penalty shall be a fine or [of] not more than one hundred dollars and imprisonment for not more than thirty days.

Passed by vote of the People at the General Election Nov. 3, 1914.

Proclamation signed by the Governor Dec. 3, 1914.

CHAPTER 2.

RELATING TO INTOXICATING LIQUORS.

INITIATIVE MEASURE NO 3.

AN ACT relating to intoxicating liquors, prohibiting the manufacture, keeping, sale and disposition thereof, except in certain cases, the soliciting and taking of orders therefor, the advertisement thereof and the making of false statements for the purpose of obtaining the same, declaring certain places to be nuisances and providing for their abatement, regulating the keeping, sale and disposition of intoxicating liquors by druggists and pharmacists, the prescription thereof by physicians, the transportation thereof, and providing for the search for and seizure and destruction thereof, prescribing the powers and duties of certain officers, and the forms of procedure and the rules of evidence in cases and proceedings hereunder, and fixing penalties for violations hereof, and the time when this act shall take effect.

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

Construction of act

SECTION 1 This entire act shall be deemed an exercise of the police power of the state, for the protection of the economic welfare, health, peace and morals of the people of the state, and all of its provisions shall be liberally construed for the accomplishment of that purpose.

"Intoxicating liquor" defined

SEC. 2. The phrase "intoxicating liquor," wherever used in this act, shall be held and construed to include whiskey, brandy, gin, rum, wine, ale, beer and any spirituous, vinous, fermented or malt liquor, and every other liquor or liquid containing intoxicating properties, which is capable of being used as a beverage, whether medicated or not, and all liquids, whether proprietary, patented or not, which contain any alcohol, which are capable of being used as a beverage.

"Person" defined

SEC. 3 The word "person," wherever used in this act, shall be held and construed to mean and include natural persons, firms, copartnerships and corporations, and all associations of natural persons, whether acting by themselves or by a servant, agent or employe.

Manufacture, sale or gift prohibited

SEC. 4. It shall be unlawful for any person to manufacture, sell, barter, exchange, give away, furnish or otherwise dispose of any intoxicating liquor, or to keep any intoxicating liquor, with intent to sell, barter, exchange, give away, furnish or otherwise dispose of the same, except as in this act provided: *Provided, however*, That it shall not be unlawful for a person to give away intoxicating liquor, to be drunk on the premises, to a guest in his private dwelling or apartment, which is not a place of public resort:

Exception as to guests

Buildings, etc., used in liquor traffic abated as nuisances.

SEC. 5. It shall be unlawful for any person owning, leasing, renting or occupying any premises, building, vehicle or boat to knowingly permit intoxicating liquor to be manufactured, sold, bartered, exchanged, given away, furnished or otherwise disposed of in violation of the provisions of this act, or to be kept with intent to sell, barter, exchange, give away, furnish or otherwise dispose of the same in violation of the provisions of this act thereon or therein; and all premises, buildings, vehicles and boats wherein and wherein intoxicating liquor is manufactured, sold, bartered, exchanged, given away, furnished or otherwise disposed of or kept with intent to sell, barter, exchange, give away, furnish or otherwise dispose of the same in violation of the provisions of this act are common nuisances, and may be abated as such, and upon conviction of the owner, lessee, tenant or occupant of any premises, buildings, vehicle or boat of a violation of the provisions of this section, the court shall order that such nuisance be abated, and that such premises, building, vehicle or boat be closed until the owner, lessee, tenant or occupant thereof shall

Bond to secure compliance with law

give bond, with a sufficient surety to be approved by the court making the order, in the penal sum of one thousand dollars, payable to the State of Washington, and conditioned that intoxicating liquor will not thereafter be manufactured, sold, bartered, exchanged, given away, furnished or otherwise disposed of thereon and therein, or kept thereon or therein, with intent to sell, barter, exchange, give away or otherwise dispose of the same contrary to law, and that he will pay all fines, costs and damages that may be assessed against him for any violation of this act; and in case of the violation of any condition of such bond, the whole amount may be recovered as a penalty, for the use of the county wherein the premises are situated; and in all cases where any person has been convicted before a justice of the peace of a violation of the provisions of this section, and no appeal has been taken from such conviction, an information or complaint may be filed in the superior court of the county in which such conviction was had to abate the nuisance, and in any such action, a certified copy of the records of such justice of the peace, showing such conviction, shall be competent evidence of the existence of such nuisance.

Recovery on bond

Conviction as evidence of nuisance

Soliciting orders or advertising

SEC. 6. It shall be unlawful for any person to take or solicit orders for the purchase or sale of any intoxicating liquor, either in person or by sign, circular, letter, poster, hand bill, card, price-list, advertisement or otherwise, or to distribute, publish or display any advertisement, sign or notice, naming, representing, describing, or referring to the quality or qualities of any intoxicating liquor, or giving the name or address of any person manufacturing or dealing in intoxicating liquor, or stating where any such liquor may be obtained.

Druggists and pharmacists

Sales for medicinal, sacramental and mechanical purposes

SEC. 7. Nothing in this act shall be construed to prohibit a registered druggist or pharmacist from selling intoxicating liquor for medicinal purposes, upon the prescription of a licensed physician, as herein provided, or for sacramental purposes, upon the order of a clergyman, as herein provided, or from selling alcohol for mechanical or

chemical purposes only; but it shall be unlawful for such druggist or pharmacist to permit any such liquor to be drunk upon the premises where sold. Every druggist or pharmacist selling intoxicating liquor or alcohol for the purposes above provided shall keep a true and exact record in a book provided by him for that purpose, in which shall be entered at the time of every sale of intoxicating liquor or alcohol made by him or in or about his place of business the date of the sale, the name of the purchaser, his place of residence, stating the street and house number (if there be such), the kind, quantity and price of such liquor or alcohol and the purpose for which it is sold, and, when the sale is for medicinal or sacramental purposes, the name of the physician issuing the prescription or of the clergyman giving the order therefor, and, when the sale is of alcohol for mechanical or chemical purposes, the purchaser shall be required to sign the record of the sale in the book. Whenever any druggist or pharmacist fills a prescription for intoxicating liquor, he shall cancel the same by writing across the face thereof in ink, the words: "cancelled," with the date on which it was presented and filled, and shall keep the same separate from other prescriptions, and no such prescription shall be filled again. Such book and all prescriptions for intoxicating liquor filled shall be open to inspection by any prosecuting attorney or city attorney, sheriff or justice of the peace, sheriff, constable, marshal or other police officer, or member of the city or town council. It shall be unlawful for any druggist or pharmacist to fail or neglect to keep such record, or to destroy or in any way alter any such record or entry therein or any prescription filled, or to permit or procure the same to be destroyed or altered, or to refuse inspection thereof to any person entitled to such inspection, or to fail or neglect to cancel any such prescription, or to refill any prescription or to sell intoxicating liquor for medicinal purposes except on a written prescription of a licensed physician, or for sacramental purposes without an order signed by a clergyman, or to sell any alcohol for mechanical or chemical purposes with-

Record of sales

Prescriptions to be cancelled.

Records open to inspection

out obtaining the signature of the purchaser: *Provided*, That nothing herein contained shall be construed to prohibit the sale by a druggist or pharmacist of such intoxicating liquor as may be needed by or for a sick person in case of extreme illness where delay may be dangerous to the patient. A druggist or pharmacist who has been convicted of selling intoxicating liquor or of any other act in violation of this section, shall not, within two years thereafter, either personally or by agent, sell intoxicating liquor for any purpose whatsoever; and upon a second conviction of a violation of the provisions of this section, such druggist or pharmacist shall forfeit his right to practice pharmacy, and the justice of the peace or superior judge before whom such druggist or pharmacist is convicted of a second violation of this section shall so adjudge, and shall send a copy of such judgment to the board of pharmacy, who, upon receipt thereof shall forthwith cancel the license of such druggist or pharmacist, and no other license shall be issued by the board of pharmacy to such druggist or pharmacist within two years from the date of such cancellation.

Emergency sales.

Conviction forfeits right of sale

Second conviction forfeits license as druggist or pharmacist

Physician's prescriptions.

Second conviction forfeits right to prescribe liquors.

SEC. 8. It shall be unlawful for any licensed physician to issue a prescription for intoxicating liquor except in writing or in any case, unless he has good reason to believe that the person for whom it is issued is actually sick, and that the liquor is required as medicine. Every prescription for intoxicating liquor shall contain the name and address of the physician, the name and quantity of liquor prescribed, the name of the person for whom prescribed, the date on which the prescription is written, and directions for the use of the liquor so prescribed. Upon the conviction a second time of any licensed physician of a violation of the provisions of this section, it shall be unlawful for such physician thereafter to write any prescription for the furnishing, delivery or sale of intoxicating liquor, and it shall be unlawful for any druggist or pharmacist to knowingly fill any such prescription written or signed by any physician who has been convicted the second time of a violation of the provisions of this section.

Internal revenue stamp tax, receipts, and records as evidence.

SEC. 9. The issuance of an internal revenue special tax stamp or receipt by the United States to any person as a retail dealer in intoxicating liquor, shall be *prima facie* evidence of the sale of intoxicating liquor by such person at the place of business of such person where such stamp or receipt is posted if, at the time, the stamp or receipt is in force and effect: *Provided*, That this section shall not apply to druggists. A copy of such stamp or of the records of the United States Internal Revenue office certified to by any United States Internal Revenue officer, deputy or assistant having charge of such records or stamps, which shows that the United States special liquor tax has been paid by any person charged with selling, bartering, exchanging, giving away, furnishing or otherwise disposing of intoxicating liquor in violation of this act, shall be competent and *prima facie* evidence that the person whose name appears on said records or stamp, as shown by said certified copy has paid the special liquor tax for the time stated therein.

Club license for distribution among members

SEC. 10. It shall be unlawful for any person to directly or indirectly keep or maintain by himself or by associating with others, or to in any manner aid, assist or abet in keeping or maintaining any club house or other place in which intoxicating liquor is received or kept for the purpose of use, gift, barter or sale or for the purpose of distribution or division among the members of any club or association.

Searches and seizure

SEC. 11. If, upon the sworn complaint of any person, it shall be made to appear to any judge of the superior court or justice of the peace that there is probable cause to believe that intoxicating liquor is being manufactured, sold, bartered, exchanged, given away, furnished or otherwise disposed of or kept in violation of the provisions of this act, such justice of the peace or judge shall, with or without the approval of the prosecuting attorney, issue a warrant directed to any peace officer in the county, commanding him to search the premises designated and described in such complaint and warrant, and to seize all

CHAPTER 19.

(S. B. 4.)

RESTRICTING IMPORTATION, SALE, USE, AND POSSESSION OF INTOXICATING LIQUORS.

AN ACT relating to intoxicating liquors and the importation, receipt, purchase, transportation, manufacture, possession, use, sale and disposition thereof, prescribing the powers and duties of certain officers in relation thereto, establishing rules of evidence in certain cases, amending sections 7, 8, 17, 18, 21, and 22, and repealing sections 15, 16, 18, 19, 20, 21, 23, and 29 of initiative measure No. 3, enacted by the people November 3, 1914, and further amending said act by adding thereto new sections to be known as sections 17a, 17b, 17c, 17d, 17e, 17f, 17g and 17h, and providing penalties for violations thereof.

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

SECTION 1. That section 7 of initiative measure No. 3, enacted by the people November 3, 1914, be amended to read as follows:

Alcohol, regulation of sales.

Section 7. Nothing in this act shall be construed to prohibit a registered druggist or pharmacist, actually engaged in the wholesale drug business in this state, from selling alcohol to a retail druggist, a hospital or manufacturer, licensed to purchase the same under the provisions of this act, or from selling alcohol for export and shipping the same to places outside the state, or to prohibit a registered druggist or pharmacist, actually engaged in the retail drug business in this state, from selling alcohol to any person holding a permit to purchase the same, issued under the provisions of this act, or to prohibit an ordained clergyman, priest or rabbi actually engaged in ministering to a religious congregation in this state, from administering intoxicating liquor for sacramental purposes only; but it shall be unlawful for a registered druggist or pharmacist engaged in the wholesale drug business only, to sell alcohol to any other person than a retail druggist, a hospital, or a manufacturer, licensed to purchase the same under the provisions of this act, and it shall be unlawful for any person other than a registered

druggist or pharmacist to sell alcohol for any purpose whatsoever, and it shall be unlawful for any druggist or pharmacist, or any other person, to dilute or adulterate alcohol, or compound it with any other substance in such proportions that it shall be capable of being used as a beverage, and sell, barter, exchange, give away, furnish, or otherwise dispose of the same, or to permit any alcohol to be diluted or adulterated, or compounded with any other substance, and drunk on the premises where sold. It shall be the duty of every druggist or pharmacist, engaged in the retail drug business, selling any alcohol for any of the purposes above provided, or to any person holding a permit to purchase the same, to keep, in a well bound book provided by him for that purpose, a true and correct record of each sale made, and to enter in such record, at the time of every sale of alcohol made by him, or in or about his place of business, the date of sale, the name of the purchaser, his place of residence (stating the street name and house number, if such there be, and the city or town, and county of such residence), the quantity and price of the alcohol, the purpose for which it was sold, the date and number of the permit upon which it was sold, and the name of the county in which said permit was issued, and the initials of the person making the sale, and to require the purchaser to sign the record in the book. Such record of sales, shall be open to inspection by any prosecuting attorney, city attorney, justice of the peace, sheriff, constable, marshal, police officer, mayor or commissioner of any city or town, or member of a city or town council. It shall be unlawful for any druggist or pharmacist, or any other person, to destroy, mutilate or in any way alter any such record or an entry therein, or to permit or procure the same to be destroyed, mutilated or altered, or to refuse inspection thereof to any person entitled to such inspection, or to sell or to ship to any person holding a permit to purchase the same, any alcohol in excess of the quantity specified in such permit, or to sell any alcohol without obtaining the signature of the purchaser, in case

Use as beverage prohibited.

Record of sales.

Permits.

delivery is made to the purchaser, or entering the name of the carrier to whom the alcohol was delivered for transportation, in the record of the sale, or to deliver any package containing alcohol so sold, without securely affixing thereto in a conspicuous place on the outside thereof, an orginal permit for the purchase of the same, issued to the purchaser, by a county auditor of this state, within thirty days prior to the date of such sale, and in case of delivery to the purchaser, without defacing and cancelling such original permit, so that it cannot be used again, and receiving, from the purchaser the duplicate permit, of like number, date and tenor as the original, dated on the date of the sale, and signed by the purchaser in the same handwriting as the signature of the applicant upon the original permit, and witnessed by the person making the sale, but in case delivery is to be made by a common carrier, or person engaged in the business of transporting goods, wares and merchandise, it shall be lawful for the druggist or pharmacist, selling alcohol upon a permit to purchase the same, after securely affixing the original permit to the package containing the alcohol, in a conspicuous place on the outside thereof, to deliver such package to such common carrier for transportation to the person named in the permit, without defacing or cancelling such permit, and in such case it shall be unlawful for such carrier to deliver such package to any other person than a forwarding common carrier, or the person named in the original permit attached to such package; or for any such common carrier or forwarding carrier to deliver such package to the person named in the permit, without defacing and cancelling such original permit so that it cannot be used again, and receiving, from the person named in the permit, the duplicate permit of like number, date and tenor as the original, dated on the day of delivery, and signed by the person named in the permit in the same handwriting as the signature of the applicant, upon the original permit, and witnessed by the person making the delivery. It shall be unlawful for any druggist or pharmacist who has been or shall be convicted of any violation of the provisions of this act, to within two years thereafter, sell alcohol for any purpose whatsoever, and upon a second conviction of any such violation such druggist or pharmacist shall, in addition to the penalty provided by this act for such violation, forfeit his right to sell drugs or practice pharmacy, as the case may be, and it shall be the duty of the justice of the peace or judge of the superior court, before whom such second conviction is had, to so adjudge and to transmit a certified copy of such judgment to the board of pharmacy, and such board shall forthwith, upon the receipt of such copy, cancel the license of such druggist or pharmacist, and no other license shall be issued to such druggist or pharmacist within two years from the date of such cancellation. It shall be the duty of every druggist and pharmacist, and of every common carrier, to keep on file all duplicate permits for the purchase of alcohol, received upon the delivery thereof to the persons named in such permits, and such duplicate permits shall be open to inspection by any prosecuting attorney, city attorney, justice of the peace, sheriff, constable, marshal, police officer, mayor or commissioner of any city or town council, and it shall be unlawful for any druggist or pharmacist, or common carrier, or any other person, to destroy, mutilate, or in any way alter any such duplicate permit, or to permit or procure the same to be destroyed, mutilated or altered or to refuse inspection thereof, to any person entitled to such inspection.

Transportation by common carriers

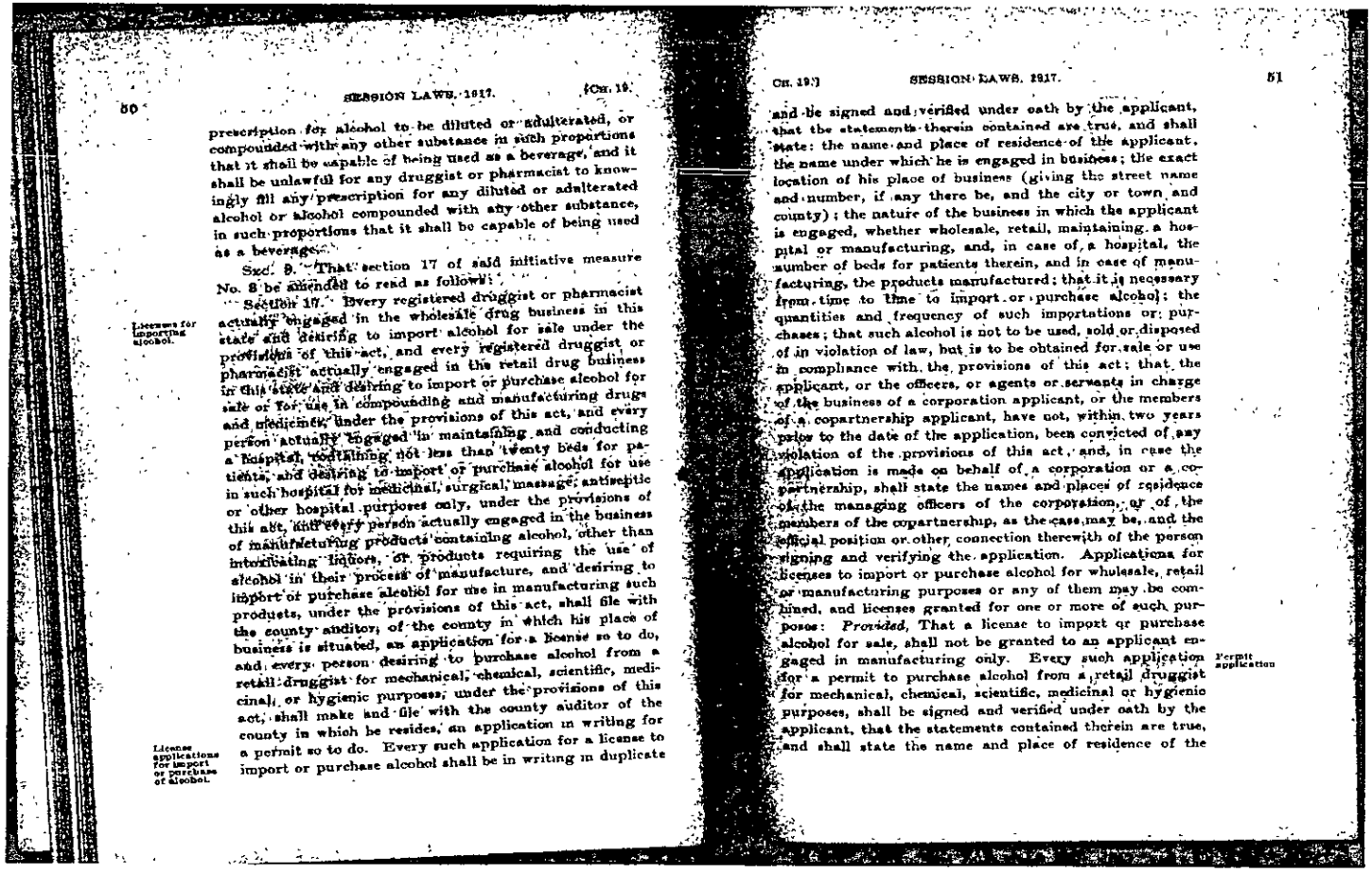
Penalty for violations of act by druggist

Duplicate permits kept on file

SEC. 2. That section 8 of said initiative measure No. 3 be amended to read as follows:

Section 8. Nothing in this act shall be construed to prohibit a licensed physician from administering alcohol, but it shall be unlawful for any licensed physician to administer diluted or adulterated alcohol, or alcohol compounded with any other substance, in such proportions that it shall be capable of being used as a beverage, and, it shall be unlawful for any licensed physician to issue a

Alcohol, prescription by physician



prescription for alcohol to be diluted or adulterated, or compounded with any other substance in such proportions that it shall be capable of being used as a beverage, and it shall be unlawful for any druggist or pharmacist to knowingly fill any prescription for any diluted or adulterated alcohol or alcohol compounded with any other substance, in such proportions that it shall be capable of being used as a beverage.

SEC. 9. That section 17 of said initiative measure No. 8 be amended to read as follows:

Licenses for importing alcohol.

Section 17. Every registered druggist or pharmacist actually engaged in the wholesale drug business in this state and desiring to import alcohol for sale under the provisions of this act, and every registered druggist or pharmacist actually engaged in the retail drug business in this state and desiring to import or purchase alcohol for sale or for use in compounding and manufacturing drugs and medicines under the provisions of this act, and every person actually engaged in maintaining and conducting a hospital, containing not less than twenty beds for patients, and desiring to import or purchase alcohol for use in such hospital for medicinal, surgical, massage, antiseptic or other hospital purposes only, under the provisions of this act, and every person actually engaged in the business of manufacturing products containing alcohol, other than intoxicating liquors, or products requiring the use of alcohol in their process of manufacture, and desiring to import or purchase alcohol for use in manufacturing such products, under the provisions of this act, shall file with the county auditor, of the county in which his place of business is situated, an application for a license so to do, and every person desiring to purchase alcohol from a retail druggist for mechanical, chemical, scientific, medicinal, or hygienic purposes, under the provisions of this act, shall make and file with the county auditor of the county in which he resides, an application in writing for a permit so to do. Every such application for a license to import or purchase alcohol shall be in writing in duplicate

License applications for import or purchase of alcohol.

and be signed and verified under oath by the applicant, that the statements therein contained are true, and shall state: the name and place of residence of the applicant, the name under which he is engaged in business; the exact location of his place of business (giving the street name and number, if any there be, and the city or town and county); the nature of the business in which the applicant is engaged, whether wholesale, retail, maintaining a hospital or manufacturing, and, in case of a hospital, the number of beds for patients therein, and in case of manufacturing, the products manufactured; that it is necessary from time to time to import or purchase alcohol; the quantities and frequency of such importations or purchases; that such alcohol is not to be used, sold or disposed of in violation of law, but is to be obtained for sale or use in compliance with the provisions of this act; that the applicant, or the officers, or agents or servants in charge of the business of a corporation applicant, or the members of a copartnership applicant, have not, within two years prior to the date of the application, been convicted of any violation of the provisions of this act, and, in case the application is made on behalf of a corporation or a copartnership, shall state the names and places of residence of the managing officers of the corporation, or of the members of the copartnership, as the case may be, and the official position or other connection therewith of the person signing and verifying the application. Applications for licenses to import or purchase alcohol for wholesale, retail or manufacturing purposes or any of them may be combined, and licenses granted for one or more of such purposes: *Provided*, That a license to import or purchase alcohol for sale, shall not be granted to an applicant engaged in manufacturing only. Every such application for a permit to purchase alcohol from a retail druggist for mechanical, chemical, scientific, medicinal or hygienic purposes, shall be signed and verified under oath by the applicant, that the statements contained therein are true, and shall state the name and place of residence of the

Permit application.

applicant, (giving the street, name and house number, if any there be, and the city or town and county), the quantity of alcohol which he desires to purchase, the purpose for which he desires to purchase and use the same, and the facts showing it is reasonably necessary for the purpose.

Sec. 4. That said initiative measure No. 3 be amended by adding thereto a new section to be known as section 17a and to read as follows:

Import for sacramental purposes.

Section 17a. Every regularly ordained clergyman, priest or rabbi, actually engaged in ministering to a religious congregation and desiring to import intoxicating liquor for sacramental purposes only, shall file with the county auditor of the county in which his congregation has its place of worship, an application for a license so to do. Every such application shall be in writing, in duplicate, and be signed and verified under oath, or upon affirmation, by the applicant, that the statements therein contained are true, and shall state: the name and place of residence of the applicant; the office which he holds; the place and date of his ordination; the name of the congregation to which he ministers and the exact location of its place of worship (giving the street name and address), if any there be, and the city or town and county; that it is necessary from time to time to import intoxicating liquor for sacramental purposes; the kind of liquor, the quantities and frequency of such importations; that such intoxicating liquor is not to be sold or disposed of in violation of law, but is to be imported and used for sacramental purposes only; and that the applicant has not, within two years prior to the date of the application, been convicted of any violations of the provisions of this act.

Form of application for license.

Sec. 5. That said initiative measure No. 3 be amended by adding thereto a new section to be known as section 17b and to read as follows:

Hearing of application.

Section 17b. Upon the filing of an application for a license to import or purchase alcohol, or to import intoxicating liquor for sacramental purposes, as provided in the preceding sections, and the payment of a fee of three

dollars, it shall be the duty of the county auditor to give the application a serial number and set it for hearing at a time not less than ten or more than twenty days from the date of filing, to notify the applicant of the time and place of the hearing, and to transmit the duplicate application, with the serial number and time and place of hearing endorsed thereon, to the prosecuting attorney of the county, and it shall be the duty of the prosecuting attorney to investigate the facts stated in the application, and attend the hearing and inform the auditor of the result of such investigation. At the hearing the applicant shall appear and offer such proof in support of the application as the auditor may reasonably require, and the prosecuting attorney may offer such proof in opposition to granting the application as the auditor may deem material, which proof may be affidavit or other documentary evidence, and the auditor shall have power to administer oaths and examine witnesses under oath. If at the hearing it shall appear to the auditor that the applicant, or any officer, agent or servant in charge of the business of a corporation applicant, or member of a copartnership applicant, has been convicted of a violation of any of the provisions of this act within two years prior to the date of the application, or that the person signing the application has wilfully made any false statement therein, the application shall be denied. If it shall appear to the auditor that the statements contained in the application are true, and that the license is sought in good faith and for a lawful purpose, he shall issue a license in the name of the applicant and bearing the serial number of the application, granting to the licensee the right, for the period of one year from the date of the license, to have issued to him from time to time, and at such intervals only as are specified in the license, permits for the importation or purchase, and transportation of alcohol for the purpose or purposes to be specified in the license, or for the importation and transportation of intoxicating liquor, for sacramental purposes only, of such kind as may be specified in the license, as the case may be,

Issuance of license.

calendar year by the state bureau of inspection and supervision of public offices, is best calculated to prevent counterfeiting and forgery, and shall be uniform throughout the state except as to the name of the county where issued, and shall be printed by the state printer, in triplicate on sheets of paper with perforations, and designated "Office Copy," "Original" and "Duplicate," respectively, and bound in book form, in such quantities as may be ordered upon the requisition of the respective county auditors, at the expense of the respective counties, and at the rates provided by law for state printing of like kind, character and quantity, and shall be in substantially the following form:

"Office Copy" "Original" "Duplicate"

"State of Washington } ss. License No.....
County of } Permit No.....

Authority is hereby granted ..... doing business at No. ..... street, city (or town) of ....., county of ....., State of Washington, to receive or purchase and have transported ..... gallons of alcohol (or "Authority is hereby granted R.W. ..... residing at No. ..... street, city (or town) of ....., county of ....., State of Washington, to import and have transported ..... quarts (or gallons) of ..... (kind of liquor) .....". This permit shall be used for only one shipment, shall be affixed in a conspicuous place to the package containing the shipment, shall be cancelled upon delivery of the shipment to the person above named, and shall be void thirty days from date.

Dated the ..... day of ....., 19..

[SEAL] .....
County Auditor.

By .....
Deputy

At the bottom of the "Office Copy" there shall be printed "Received the original and duplicate of this permit this .... day of ....., 19..

.....
Licensee

At the bottom of the "original permit" there shall be printed in red ink, the following:

"WARNING: IT IS UNLAWFUL for any person or common carrier to transport on, or attached to, this permit any liquor of any other kind than, or in any quantity in excess of, that specified in this permit, or to deliver the package to which this permit is attached to any other person than the consignee named herein, or to the consignee without defacing and cancelling this original permit and receiving the duplicate hereof signed by the consignee."

At the bottom of the "duplicate permit" there shall be printed in red ink the following:

"WARNING. This is a duplicate permit to be signed and surrendered by the consignee herein named upon the receipt of the package to which the original hereof is attached. IT IS UNLAWFUL for any person or common carrier to transport on, or attach to, this duplicate permit any alcohol or other intoxicating liquor," and below shall be printed: "Received the above described shipment this ... day of ....., 19..

.....
Consignee."

All permits, both original and duplicate, shall be signed by the county auditor issuing the same, or by his authorized deputy, and bear the serial number of the license upon which they are issued, the serial number of the individual permit, the date of issue, and the official seal of the auditor. Permits for the purchase of alcohol for mechanical, chemical, scientific, medicinal or hygienic purposes, from a retail druggist, shall be in substantially the form of permits for the importation or purchase, of alcohol, as hereinabove set forth, except that they shall not bear the license number, or contain the word "import." Purchase permits. form.

SEC. 7. That said initiative measure No. 3 be amended by adding thereto a new section to be known as section 17d and to read as follows:

Section 17d. It shall be unlawful for any wholesale druggist licensed to import alcohol under the provisions of this act, to sell alcohol to any person other than a retail Alcohol sales by wholesale druggists.

duty of the registrar of each county, city or town, respectively, to procure and use the cabinets or binders and the forms, cards and records as prescribed by the state auditor, by and through the division of municipal corporations.

Date act becomes effective

SEC. 31. From and after the second day of January, 1934, the acts and parts of acts enumerated in the following schedule shall be repealed; provided that said acts and parts of acts insofar as they apply to the registration of voters in precincts lying outside of incorporated cities and towns shall continue in effect until the second day of January, 1936

SCHEDULE

Repeals Laws of 1889-90

An act entitled "An act to provide for and to regulate the registration of voters in cities and towns, and in precincts having a voting population of two hundred and fifty (250) or more," approved March 27, 1890, Laws of 1889-90, pages 414-419;

Repeals § 455, vol 1 Hill's Code

An act entitled "An act to amend section five (5) of an act entitled 'An act to provide for and to regulate the registration of voters in cities and towns, and in precincts having a voting population of two hundred and fifty or more' and declaring an emergency," approved September 11, 1890, Laws of the Special Session held September 3d to 11th, inclusive, 1890;

Repeals § 6, ch. III Laws of 1891; ch CIV, Laws of 1891; ch XLV Laws of 1893, ch CXXIX Laws of 1895; ch CXXXV, Laws of 1901

Section 5 of chapter LII (3) of the Laws of 1891, page 4;

Chapter CIV (104) of the Laws of 1891, page 198;

Chapter XLV (45) of the Laws of 1893, pages 72-75;

Chapter CXXIX (129) of the Laws of 1895, page 340;

Chapter CXXXV (135) of the Laws of 1901, pages 284-289,

Repeals ch 63, Laws of 1903; ch 171, Laws of 1905; ch 118, Laws of 1907; ch 168, Laws of 1909; ch 16, Laws of 1915, §§ 2-9 inc. and 11, ch 163 Laws of 1919, §§ 5114-5137 inc., Rem Comp Stat; §§ 2322-2347 inc Pierce's Code

Chapter 63 of the Laws of 1903, pages 80-81,

Chapter 171 of the Laws of 1905, pages 346-349;

Chapter 118 of the Laws of 1907, pages 216-217;

Chapter 168 of the Laws of 1909, pages 628-629;

Chapter 16 of the Laws of 1915, pages 33-43,

Sections 2, 3, 4, 5, 6, 7, 8, 9, and 11 of Chapter 163 of the Laws of 1919, pages 462-469;

Sections 5114 to 5137, both inclusive, of Remington's Compiled Statutes;

Sections 2322 to 2347, both inclusive, of Pierce's 1919 Code.

Passed by vote of the people at the general election, November 8, 1932.

Proclamation signed by the Governor December 8, 1932.

CHAPTER 2

[INITIATIVE MEASURE NO 61]

REPEAL OF INTOXICATING LIQUOR LAWS

AN ACT relating to intoxicating liquors, providing penalties; amending section 1 of chapter 200 of the Laws of 1929 and repealing chapter 28 of the Laws of 1903, chapter 2 of the Laws of 1915, chapter 25 of the Laws of 1919, chapter 19 of the Laws of 1917, chapter 122 of the Laws of 1921, chapter 30 of the Laws of 1923, chapter 126 of the Laws of the Extraordinary Session of 1925, chapter 94 of the Laws of 1927 and chapter 58 of the Laws of 1931

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

Amends § 1 ch 200 Laws of 1929

SECTION 1. That section 1 of chapter 200 of the Laws of 1929 be amended to read as follows:

Section 1. Every person who shall sell any intoxicating liquor to any minor shall be guilty of a felony

Repeals ch 28, Laws of 1903; ch 2 Laws of 1915 ch 19 Laws of 1917 ch 25, Laws of 1919

SEC. 2 That chapter 28 of the Laws of 1903, chapter 2 of the Laws of 1915, chapter 25 of the Laws of 1919, chapter 19 of the Laws of 1917, chap-

Repeals ch. 122, Laws of 1921; ch. 30, Laws of 1923; ch. 126, Ex. Laws of 1925; ch. 98 Laws of 1927; ch. 68, Laws of 1931, § 7306-7346 inc. Rem Comp Stat. § 7309 7320-1, § -2 -4, -5, Rem Comp Stat 1927 Supp

ter 122 of the Laws of 1921, chapter 30 of the Laws of 1923, chapter 126 of the Laws of the Extraordinary Session of 1925, chapter 98 of the Laws of 1927, and chapter 68 of the Laws of 1931, (sections 7306, 7307, 7308, 7309, 7310, 7311, 7312, 7313, 7314, 7315, 7316, 7317, 7318, 7319, 7320, 7321, 7322, 7323, 7324, 7325, 7326, 7327, 7328, 7329, 7330, 7331, 7332, 7333, 7334, 7335, 7336, 7337, 7338, 7339, 7340, 7341, 7342, 7343, 7344, 7345 and 7346 of Remington's Compiled Statutes, and sections 7309, 7320-1, 7320-2, 7320-3, 7320-4 and 7320-5 of Remington's Compiled Statutes, 1927 Supplement) be and the same are hereby repealed: *Provided*, That the repeals herein provided for shall not be construed or held to revive or make effective any statute or law providing for the licensing and operation of saloons.

Saloons not revived

Passed by vote of the people at the general election November 8, 1932.

Proclamation signed by the Governor December 8, 1932.

CHAPTER 3.

[INITIATIVE MEASURE NO 62]

STATE GAME CODE.

AN ACT relating to the organization and administration of the state government, creating the department of fisheries, the department of game, and certain offices connected therewith, and defining the powers and duties thereof, and amending chapter 7 of the Laws of 1921, chapter 176 of the Laws of the Extraordinary Session of 1925, and repealing certain acts and parts of acts in relation thereto.

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

Amends § 2, ch 7 Laws of 1921

SECTION 1. That section 2 of chapter 7 of the Laws of 1921 be amended to read as follows:

Section 2. There shall be, and are hereby created, departments of the state government which shall be known respectively as (1) the department of public works, (2) the department of business control, (3) the department of efficiency, (4) the department of taxation and examination, (5) the department of health, (6) the department of conservation and development, (7) the department of labor and industries, (8) the department of agriculture, (9) the department of licenses, (10) the department of fisheries, and (11) the department of game, which departments shall be charged respectively with the execution, enforcement, and administration of such laws, and invested with such powers and required to perform such duties, as the legislature may provide

Departments of state government

Amends § 3 ch. 7, Laws of 1921

SEC. 2. That section 3 of chapter 7 of the Laws of 1921 be amended to read as follows.

Department heads

Section 3. There shall be a chief executive officer of each of the departments of the state government created by this act, to be known respectively as, (1) the director of public works, (2) the director of business control, (3) the director of efficiency, (4) the director of taxation and examination, (5) the director of health, (6) the director of conservation and development, (7) the director of labor and industries, (8) the director of agriculture, (9) the director of licenses, (10) the director of fisheries, and (11) the director of game; who, unless otherwise hereinafter specifically provided, shall be appointed by the governor, with the consent of the senate and hold office at the pleasure of the governor. *Provided*, That if the senate be not in session when this act takes effect, and in case a vacancy occurs while the senate is not in session, the governor shall make a temporary appointment until the next meeting of the senate, when he shall present to the senate his nomination for the office.

Appointed by Governor with consent of Senate

Amends § 107, ch 7, Laws of 1921.

SEC. 3. That section 107 of chapter 7 of the Laws of 1921 be amended to read as follows:

Department of fisheries

Section 107. The department of fisheries shall be organized into and consist of, the state fisheries

Supreme Court No. _____
Court of Appeals No. 47727-1-II
Consolidated With Court of Appeals No. 47367-4-II

STATE OF WASHINGTON
SUPREME COURT

DALE E. ALSAGER, D.O., Ph.D.,

PETITIONER,

v.

BOARD OF OSTEOPATHIC MEDICINE AND SURGERY;
et al.,

RESPONDENTS.

DECLARATION OF SERVICE

RHYS A. STERLING, P.E., J.D.
By: Rhys A. Sterling, #13846
Attorney for Petitioner Dale E. Alsager

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Hobart, Washington 98025-0218
Telephone: 425-432-9348
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Email: RhysHobart@hotmail.com

STATE OF WASHINGTON)
) ss. DECLARATION OF RHYS A.
) ss. STERLING
COUNTY OF KING)

RHYS A. STERLING hereby says and states under penalty of perjury:

1. I am over the age of 21 and I am competent to testify regarding the matters herein described. I make this declaration on my own personal knowledge.

2. I am the attorney of record representing Petitioner Dale E. Alsager in the action captioned *Dale E. Alsager v. Board of Osteopathic Medicine and Surgery, et al.*, Court of Appeals No. 47727-1-II Consolidated With No. 47367-4-II, and Supreme Court No. _____.

3. By postage prepaid priority first class mail on December 8, 2016, I served on the other parties in this action, through their respective counsel of record, a copy of DALE ALSAGER'S PETITION FOR DISCRETIONARY REVIEW – RAP 13.4(a) and this DECLARATION OF SERVICE filed in this matter, by placing in the United States mail the same addressed to:

Kristin G. Brewer, AAG
Thomas F. Graham, AAG
Office of the Attorney General
P.O. Box 40100
Olympia, Washington 98504-0100
Attorneys for Respondents

4. On December 8, 2016, I filed in the Court of Appeals, Division 2, the original and two (2) copies of DALE ALSAGER'S PETITION FOR DISCRETIONARY REVIEW – RAP 13.4(a), and the original and one (1)

copy of this DECLARATION OF SERVICE in this matter, by personally delivering the same to the following physical address:

Court of Appeals, Division II
950 Broadway, Suite 300
Tacoma, Washington 98402
Attn: David C. Ponzoha,
Clerk/Administrator

5. On December 8, 2016, Petitioner Dale E. Alsager tendered the appropriate filing fee to the Court of Appeals, Division 2.

6. Pursuant to the provisions of RAP 13.4(a), 10.2(h), and 10.4(a)(1), Alsager's Petition for Discretionary Review has been properly filed and all parties required to be served with a copy of both DALE ALSAGER'S PETITION FOR DISCRETIONARY REVIEW – RAP 13.4(a) and this DECLARATION OF SERVICE have been served as set forth above.

I certify and declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct:

December 8, 2016
DATE

RHYS A. STERLING (WRITTEN)
WSBA # 13846

Hobart, WA
PLACE OF SIGNATURE

Rhys A. Sterling
RHYS A. STERLING (PRINTED)