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STATE OF WASHINGTON
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COURT OF APPEALS OF THE
STATE OF WASHINGTON
Case No. 38844-8-II

JOYCE TASKER,

Appellant,

v.

WASHINGTON STATE DEPT. OF HEALTH

Respondent.

**APPELLANT JOYCE TASKER'S
REPLY BRIEF ON APPEAL**

Submitted by:

Joyce Tasker Pro Se
2279 Marble Vly. Basin Rd.
Colville WA 99114-9575
509-684-5433

(1000 copy) 2-20-09 e-fuea 2-17-09

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I. Introduction

Respondent Department of Health (DOH) asserts in its Response Brief¹ that this case is an attempt by Appellant Tasker (Tasker) to obtain a second judicial review of the DOH Health Law Judge (HLJ) Order, which is barred by the doctrine of *res judicata* because “it arises out of the same facts reviewed in the first action and Tasker failed to raise this argument in the first action.” (RB-1)

DOH also identifies subject matter jurisdiction as an issue in this case but dismisses Tasker’s argument as “one of procedure and statutory interpretation, and not one of subject matter jurisdiction.” (RB-10)

Despite DOH’s assertions to the contrary, Tasker is not disputing the factual findings or legal conclusions of the DOH HLJ Order, or the judicial review affirmance of that Order, in this case. This case seeks a declaratory judgment that, under the Uniform Declaratory Judgment Act (UDJA) of RCW 7.24 *et. seq.*, the portion of the Order imposing a \$10,000 fine is unenforceable because the HLJ, as an adjudicative tribunal, did not have subject matter jurisdiction over the controversy whether Tasker was practicing medicine (human and veterinary) without a state license.

II. Standard of Review.

¹ Response Brief, hereinafter “RB.”

DOH asserts: (1) that the superior court upheld the DOH's determination that, under RCW 18.130.190, an HLJ may decide unlicensed practice cases; and, (2) that the court gives "substantial weight" to an agency's interpretation of the law it administers and implies that the superior court did so in this case. (RB-2) However, a court does not defer to an administrative agency's determination of the scope of its own authority. *In re Electric Lightwave, Inc.* 123 Wn.2d 530, 540, 869 P.2d 1045 (1994). The scope of DOH's authority and whether the Superior Court had subject matter jurisdiction under the UDJA are questions of law to be reviewed *de novo* by this court. *Sunnyside Irrigation District v. Dickie*, 149 Wn.2d 873, 880, 73 P.3d 369 (2003).

III. Superior Court had subject matter jurisdiction under the UDJA to determine whether the DOH HLJ Order imposing a \$10,000 fine is enforceable. This controversy is not *res judicata*.

A. Superior Court's jurisdiction under the UDJA.

Superior Court Judge Tabor dismissed this case finding that:

"The court lacks jurisdiction under RCW 7.24 [because the matter is] *res judicata*." Order Dismissing Declaratory Judgment Action-2 Appendix No 7

However, RCW 7.24.020 confers jurisdiction on the Superior Court for:

"A person ... whose rights, status or other legal relations are affected by a statute [and such a person] ... may have determined any question of construction or *validity* arising under the ... statute ... and obtain a declaration of rights, status or other legal relations thereunder." (Emphasis added.)

Tasker, in this case, seeks a declaratory judgment that the portion of the DOH Order imposing a fine against her for practicing medicine without a license is unenforceable because the HLJ issuing the Order did not have subject matter jurisdiction. (Complaint² – 4)

The UDJA’s purpose is:

“... to settle and to afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations; and is *to be liberally construed and administered.*” RCW 7.24.120; *see also, Nelson v. Appleway*, 160 Wn.2d 262 (2007). (Emphasis added.)

Tasker has a DOH HLJ Order requiring her to pay \$10,000 to DOH within 180 days of entry of the Order.³ The Order was issued on Jan. 26, 2006 and is final. Cease and Desist (CD-24).⁴ No portion of the fine has been paid. The debt is currently owed. Tasker is, as a matter of law, subject to garnishment of monies or seizure of property at any time. This case was brought under the UDJA seeking to relieve Tasker of uncertainty about the validity and collectability of the debt. The mere existence of the fine, reduced to a final judgment, also creates insecurity for Tasker by impairing her credit.

Tasker’s Complaint belies assertions by the DOH that her case is an attempt at a second judicial review. (RB-5). In relevant part, the Complaint asserts:

² Complaint, hereinafter “COMP.”

³ The Order states: “Respondent shall pay an administrative fine to the program manager in the amount of \$10,000.00 (ten thousand dollars) within 180 days (one hundred and eighty days) of entry of this order, PROVIDED that \$6,000.00 (six thousand dollars) shall be suspended on the condition that Respondent timely pays \$4,000.00 (four thousand dollars) and refrain from any future unlicensed practice violation.”

⁴ Cease and Desist Order, hereinafter “CD.”

4.1 A Declaratory Order that the DOH had no lawful authority to conduct the adjudicatory hearing against Joyce Tasker except by assignment to the Office of Administrative Hearings pursuant to RCW 34.12;

4.2 A Declaratory Order that the DOH decision against Ms. Tasker is void “ab initio” due to lack of subject matter jurisdiction.

4.3 A Declaratory Order that the DOH has no authority to enforce the \$10,000 fine against Ms. Tasker.

4.4 An award of attorney’s fee and costs pursuant to the Equal Access to Justice Act. COMP-5

DOH may be attempting to assert that Tasker’s UDJA case is not ripe because, to date, no “disciplinary authority” has filed an enforcement action against Tasker. As stated above, the mere existence of the Order for a \$10,000 fine creates the uncertainty and insecurity meant to be addressed by the UDJA.

B. *There is no res judicata because the issues before the HLJ, and on judicial review of his Order, are not the same as the issues before Judge Tabor under the UDJA.*

DOH claims that Tasker should have raised the issue of subject matter jurisdiction in the earlier HLJ matter and is now precluded from doing so. (RB-8) What DOH ignores is that subject matter jurisdiction can be raised at any time. (RAP 2.5(a))⁵ The Supreme Court, in *Marley v. Dept. of Labor & Industries*, 125 Wn.2d 533, 886 P.2d 189 (1994), held that claim preclusion (*res judicata*) applies to a final

⁵ (a) Errors Raised for First Time on Review. “ The appellate court may refuse to review any claim of error which was not raised in the trial court. However, a party may raise the following claimed errors for the first time in the appellate court: (1) lack of trial court jurisdiction, (2) failure to establish facts upon which relief can be granted, and (3) manifest error affecting a constitutional right. A party or the court may raise at any time the question of appellate court jurisdiction.....”

administrative order *unless* the order is void on jurisdictional grounds. At 541, 543-544. The central issue in *Marley* was what a claimant must show to establish that an administrative order was void when entered. The court found that “a void judgment exists whenever the issuing court lacks . . . subject matter jurisdiction over the claim.” At 539. In *Marley*, only subject matter jurisdiction was at issue and the court found that the legislature had granted “original and exclusive” subject matter jurisdiction to the Department of Labor & Industries over claims for worker’s compensation to “determine questions of law and fact as to whether a compensable injury has occurred.” At 539-540. Because the Department of Labor & Industries had subject matter jurisdiction of the unappealed decision, the Supreme Court affirmed the Department’s denial of Marley’s claim. At 543-544. *See also, Hertzke v. DRS*, 104 Wn App 920 (2001).

As set out in Section IV, below, and distinguishing this case from *Marley*, the DOH does *not* have subject matter jurisdiction over all disciplinary proceedings related to health care and has *limited* jurisdiction over enforcement matters related to the unlicensed practice of medicine.

This case seeks a court declaration that the fine imposed in the HLJ Order is unenforceable because the HLJ was not a tribunal with subject matter jurisdiction to adjudicate the Tasker matter. The HLJ matter was an adjudication of facts and, on judicial review, the courts determined whether there was substantial evidence to

support the HLJ's factual conclusions (and found there was). *This* case is an interpretation of law for the court. DOH's repetitive assertions in its brief that this case is a "collateral attack," "re-litigating", or a "contest" of the DOH Order is a transparent ploy to recharacterize this case in hope of getting this court to affirm the erroneous decision by the Superior Court that it did not have jurisdiction to decide the declaratory judgment action.

For *res judicata* to apply to this UDJA case, there must be: (1) same subject matter; (2) same cause of action; (3) same persons and parties; and, (4) same quality of persons for or against whom the claim is made are the same. *Hayes v. City of Seattle*, 131 Wn.2d 706, 711-712, 934 P.2d 1179 (1997).

(1) Subject matter. The HLJ case was a factual adjudication to determine whether Tasker was practicing medicine without a state license, while the UDJA case seeks a court declaration of the unenforceability of the fine portion of the HLJ Order based on the lack of subject matter jurisdiction by the HLJ tribunal.

(2) Cause of action. The HLJ case is an administrative enforcement of the state health professions' licensing statutes, while the UDJA case seeks a court declaration of the unenforceability of the DOH Order imposing a \$10,000 fine against Tasker.

(3) Persons and parties. The persons and parties in both cases are the same.

(4) Quality of persons for or against whom claim is made. The quality of persons for or against whom the claim is made is the same in both cases. *Id.*

The parties affected by the outcome of the claims in the two cases should also be considered in determining whether *res judicata* applies. The Order issued in the administrative HLJ case against Tasker applies to Tasker alone. However, this UDJA case is a challenge to the lack of statutory due process provided by DOH against unregulated health professions (through their application against Tasker). It will be precedent for all unregulated healthcare practitioners who have been found by an HLJ to be “practicing medicine” and who have had huge fines imposed against them⁶ and lost their means of making a livelihood through a Cease and Desist Order.⁷

Application of the relevant criteria shows that the subject matters and causes of action are distinctly different between the HLJ matter and the UDJA matter. *Res judicata* does not apply.

IV. The DOH Secretary’s HLJ tribunal did not have subject matter jurisdiction to impose the \$10,000 fine,⁸ making the HLJ’s Order for a fine unenforceable.

A. Subject matter jurisdiction can be raised at any time.

⁶ As an example, in Yow the fine was \$444,000.00. Div I COA WA No.7-2-02554-5

⁷ *Id.*

⁸ Tasker’s Complaint only challenged the enforceability of the fine portion of the DOH HLJ Order and that is the only issue before this court. However, if the HLJ did not have subject matter jurisdiction to issue an Order to impose a fine, it is Tasker’s position that he also did not have subject matter to make the factual determination that Tasker was practicing medicine and veterinary medicine without a state license and prohibiting her from her profession. (CD -Appendix No.1 -24)

Tasker can raise the issue of subject matter jurisdiction to the Washington appellate courts through this UDJA case because there is no statute of limitations, or *res judicata* (as set out in Section III above).

Rule of Appellate Procedure 2.5(a) provides in pertinent part:

(a) Errors Raised for First Time on Review. The appellate court may refuse to review any claim of error which was not raised in the trial court. However, a party may raise the following claimed errors for the first time in the appellate court: (1) lack of trial court jurisdiction, ... (3) manifest error affecting a constitutional right. A party or the court may raise at any time the question of appellate court jurisdiction

See also, *Marley at 538 -539* (a void judgment exists whenever the issuing court lacks subject matter jurisdiction over the claim; and, if an order is void, then no appeal is necessary and the statute of limitations will not apply).

B. State law limits the DOH Secretary's subject matter jurisdiction

The Washington Supreme Court in the *Marley* case held that *a tribunal* lacks subject matter jurisdiction when it attempts to adjudicate a type of controversy over which it has no authority. *At 539*. The Department of Labor & Industries in *Marley* had the “original and exclusive jurisdiction, in all cases where claims are presented, to determine the mixed question of law and fact as to whether a compensable injury has occurred” (*at 539-540*). The DOH Secretary has limited subject matter jurisdiction to make final factual determinations whether a person has engaged in or is engaging in an unlicensed practice of a health profession and to impose a fine if they have.

(1) Three categories of health care professions in Washington state.

There are three broad categories of health care professions addressed by the Revised Code of Washington. They are pictured below:

<p>Category 1. Licensed health professions - with “full authority board” disciplinary authority (e.g. M.D.’s – MQAC – 18.71 and 18.130.040(2)(b))</p>	<p>Category 2. Licensed health professions - with no Regulatory Board – DOH Secretary is disciplinary authority (e.g. Acupuncturists – 18.06 and 18.130.040(2)(a))</p>	<p>Category 3. Unregulated health professions with no Regulatory Board or disciplinary authority (e.g. CAMs such as EDT, CED, colon-hydrotherapists, herbalists, etc. 18.120)</p>
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Additionally, the DOH has the subject jurisdiction under the UDA to initiate an investigation of a complaint concerning practice by unlicensed persons of a profession or business for which a license is required; as well as to refer for prosecution (criminally); or, to enjoin (civilly) persons who engage in a health profession without a license where one is required. RCW 18.130.190.

(2) EDT/CED is not a licensed profession

The central question in this case is whether the Secretary, by virtue of RCW 18.130.190, is given subject matter jurisdiction over all persons – regulated with a full authority board, regulated with no board and unregulated – to make a final determination that a person has or has not practiced a licensed profession without a required license; and, if she has jurisdiction, whether the Secretary can legally exercise that subject matter jurisdiction by designating a DOH employee as an HLJ who signs the final Order as a final decision-maker after signing an employment contract that prohibits the HLJ from “exercising independent judgment?”

DOH does not have subject matter over the Tasker matter because EDT/CED is not “a profession or business for which a license is required.” EDT/CED is not included in the curriculum of medical schools. EDT/CED is not within the scope of practice of MDs. Medical Quality Assurance Commission’s (MQAC) prosecution of Geoff Ames, M.D. is substantial evidence of this fact.⁹ Dr. Ames used EDT in his practice and was prosecuted for unprofessional conduct for using EDT, which MQAC found to be practicing outside the minimal acceptable and prevailing standards of care for an MD in the state of Washington.¹⁰

The import of the *Ames* case is the judicial admission by MQAC that use of EDT is not acceptable within the practice of medicine by an MD in the state of Washington (even if it falls within the definition of “practice of medicine” in RCW 18.71.011 as alleged in the Tasker matter). An MD using EDT in his practice will be charged, as Dr. Ames was, with unprofessional conduct. This means that the DOH Secretary cannot charge Tasker with the unlicensed practice of medicine for a modality, when used by an MD, is essentially deemed by MQAC to be *outside the acceptable scope of the practice of medicine!* (Appendix No. 2)

(3) Applicability of the Uniform Disciplinary Act.

⁹ Tasker asks this Court to take judicial notice of the *Ames* case (WA Court of Appeals No. 24897-6-III, generally, and specifically the HLJ’s findings regarding the use of EDT as not properly being within the scope of a physician’s medical practice.

¹⁰ The MQAC decision in *Ames* was affirmed on appeal: WA Court of Appeals No. 24897-6-III and is being briefed to the Supreme Court No. 80644-6. (Appendix No. 2)

RCW 18.130.040 sets out the two categories of disciplinary authority subject matter jurisdiction: **Category 2** (see diagram above) - those health professions without regulatory boards for which the DOH Secretary has authority; and, **Category 1** - those professions with “full authority boards,” which are the disciplinary authorities for each licensed profession. RCW 18.130.040(2)(a) and (b), respectively.

Additionally, RCW 18.130.040(1) provides that:

“This chapter [18.130] applies only to the secretary and the boards and commissions having jurisdiction in relation to the professions *licensed* under the chapters specified in this section. *This chapter [18.130] does not apply to any business or profession not licensed under the chapters specified in this section.*” (Emphasis added.)

Tasker’s EDT/CED profession is not licensed under Chapter 18 RCW. For this provision of RCW Chapter 18.130 to be *consistent* with RCW 18.130.190 (authorizing the Secretary of DOH to investigate complaints and take other actions concerning the practice of licensed professions by persons without a license), RCW 18.130.190 would have to be interpreted to mean that the Secretary does *not* have subject matter jurisdiction over: (a) unregulated professions at all except to investigate and refer matters to the Attorney General for action under common law, criminal law or civil injunction; and/or, (b) unregulated professions performing services that the licensed professions are not performing. This distinguishes persons who are trained for a licensed profession but have either not obtained the state license or have lost their license through an administrative process. These persons would, arguably, be within

the jurisdiction of the DOH Secretary for investigation and prosecution for practicing a licensed profession without a license (for conduct that is within the practice of medicine [or other licensed profession]). Thus, persons such as Tasker are clearly outside the jurisdiction of the Secretary. The Secretary, if she believes Tasker's profession constitutes the practice of medicine, must refer it to the Attorney General for prosecution as a crime¹¹ or for a civil injunction¹² because of alleged harm to the public.

(4) RCW 18.120 provides legislative intent and context for interpreting RCW 18.130.190.

The Purpose statement of RCW Chapter 18.120 supports the above interpretation of RCW 18.130.190. Generally, RCW 18.120 sets out guidelines for commencing regulation of health professions that are not licensed or otherwise regulated. If the DOH establishes that an unregulated health practice can clearly harm or endanger the health, safety or welfare of the public, it can (after following statutory procedures)

¹¹ RCW 18.130.190(7): "(a) Unlicensed practice of a profession or operating a business for which a license is required by the chapters specified in RCW 18.130.040, unless otherwise exempted by law, constitutes a gross misdemeanor for a single violation. (b) Each subsequent violation, whether alleged in the same or in subsequent prosecutions, is a class C felony punishable according to chapter 9A.20. RCW."

¹² RCW 18.130.190(6): "The attorney general, a county prosecuting attorney, the [DOH] secretary, a board, or any person may in accordance with the laws of this state governing injunctions, *maintain an action in the name of this state* to enjoin any person practicing a profession or business for which a license is required by the chapters specified in RCW 18.130.040 without a license from engaging in such practice or operating such business until the required license is secured. However, the injunction shall not relieve the person so practicing or operating a business without a license from criminal prosecution therefore, but the remedy by injunction shall be in addition to any criminal liability." (Emphasis added.) The DOH "maintains an action" brought by the AG in a court of law.

request the legislature to regulate the health practice at issue. RCW 18.120 *et. seq.*

RCW 18.120.010 provides in pertinent part:

*“...The legislature believes that all individuals should be permitted to enter into a health profession unless there is an overwhelming need for the state to protect the interests of the public by restricting entry into the profession. Where such a need is identified, the regulation adopted by the state should be set at the least restrictive level consistent with the public interest to be protected. ...*It is the intent of the chapter that no regulation shall, after July 24, 1983, be imposed upon any health profession except for the exclusive purpose of protecting the public interest.* (Emphasis added.)*

RCW 18.120.010 (3) directs the legislature, if it finds that it is necessary to regulate a health profession not previously regulated by law, to adopt the least restrictive method of regulation. The least restrictive regulation is identified as:

“(a) Where existing common law and statutory civil actions and criminal prohibitions are not sufficient to eradicate existing harm, the regulation should provide for stricter civil actions and criminal prosecutions;”

This is persuasive legislative intent that the DOH Secretary is *now* limited to common law, statutory civil actions and criminal prosecutions if an unregulated profession is violating the law (for example: consumer fraud [common law]; injunction to stop a health profession causing health or financial harm [civil]; or, criminal prosecution for battery, assault, consumer fraud or practice of medicine without a license [crimes]).

Further, RCW 18.120 was written and sponsored by Washington State’s current insurance commissioner, Mike Kreidler, (when he was state representative), who, in an article in the Olympian 1982, has asserted about the bill that became RCW

18.120; “The reason you see government in these turf battles is that you don’t see free enterprise working.” The article goes on to state that: “Because the Legislature is bound to go on getting involved in these professional turf wars, Kreidler has introduced a bill setting up ways to deal with them. It is a complicated bill, but its heart is a statement that the state should keep its nose out of health care licensing as much as possible.” (Emphasis added.) This supports Tasker’s interpretation of RCW 18.130 and RCW 18.120. (Appendix No. 3, No 8)

RCW 18.120.010 *et. seq.* was first adopted in 1983. RCW 18.130.190 was first adopted in 1984,¹³ and cannot be used by DOH to circumvent the purpose of RCW 18.120 – requiring regulation of unregulated health practices only after evidence of harm has been obtained and presented to the legislature and enabling legislation has been adopted. The HLJ Order found that Tasker has caused no harm and stated “EDT devices like biofeedback devices are safe in that they emit very low voltage.” (CD-17 Appendix No. 1)

Tasker’s EDT/CEDS health care profession (use of an FDA-approved electrical biofeedback equipment) is unlicensed and unregulated (**Category 3** in diagram above). (RB-4 at footnote 3) The Secretary is legislating – prohibiting certain types of unregulated health care practices - through individual enforcement cases. Under RCW 18.120, only the legislature can regulate or prohibit specific health care practices.

¹³ Washington Statutes, Chapter 279 Section 19 (1984).

RCW 18.130.190(1) authorizes the Secretary of DOH to “investigate complaints concerning practice by unlicensed persons of a profession or business for which a license is required.” The Secretary has interpreted this authorization so broadly that every unregulated health profession is subsumed in the definition of “practice of medicine,” including the unconstitutionally broad prohibition against “advis[ing]” on any “human condition” or the administration or prescribing of “medicinal preparations to be used by another,” which could include grandmothers who make chicken soup because “it’s good for you.” RCW 18.71.011.¹⁴

While some of the characteristics of a particular unregulated practice may overlap with portions of the definition of “practice of medicine” (“advice” on a “human condition”), with the Secretary’s current interpretation of her subject matter jurisdiction, the likely effect is to eliminate thousands of unregulated health care related jobs in the state of Washington including persons who provide health care therapies with use of: natural elements such as air, heat, water, and light; Class I or Class II medical devices approved by the Federal Food and Drug Administration; devices, tools, or procedures that may be nontraditional, unique or experimental;

¹⁴ RCW 18.71.011 “A person is practicing medicine if he does one or more of the following: (1) Offers or undertakes to diagnose, cure, *advise* or prescribe for any human disease, ailment, injury, infirmity, deformity, pain *or other condition*, physical or mental, real or imaginary, by any means or instrumentality; (2) Administers or prescribes drugs or medicinal preparations to be used by any other person; (3) Severs or penetrates the tissues of human beings;...” (Emphasis added.) Such a definition would include a mother giving her child aspirin for a fever “diagnosed” with the instrumentality of a fever thermometer purchased at Fred Meyer; or, a coach advising basketball players to strengthen their muscles with exercise and high protein diets.

vitamins, minerals, herbs, natural food products and their extracts, and nutritional supplements; dietary supplements as defined by the Federal Dietary Supplement and Health Education Act of 1994; homeopathic remedies; detoxification practices, including but not limited to sauna, foot baths, baths, colon hydrotherapy, and oxidative therapies; as well as traditional cultural health care practices. These health care practices are not provided by medical doctors.

Examples of licensed and unregulated subject matter overlap from other non-medical professions may be helpful. A bookkeeper performs many duties that a licensed accountant performs. If the bookkeeper oversteps her bounds and does something that is the *exclusive right* of a licensed accountant, the bookkeeper can't be disciplined by the accountancy board because the board lacks authority over the unregulated bookkeeper. The bookkeeper might be taken to civil or criminal court under appropriate circumstances. The same issues of overlapping scope of practice applies to architects and contractors; contractors and builder/fix-it men; landscape architects and gardeners-for-hire; and, registered process servers and any citizen over the age of 18.

A statutory interpretation reconciling RCW 18.130.040, RCW 18.130.190 and RCW 18.120.010 will settle the conflict for future courts, for the DOH Secretary and for the practitioners of unregulated health care services. It will settle where the line

for accountability (subject matter jurisdiction) is between unregulated and regulated health care practices.

- (5) Even if the DOH Secretary has subject matter jurisdiction, she cannot delegate it in violation of state law to an HLJ whose job description and employment contract prohibit exercise of independent judgment.

RCW 18.130.190(3) authorizes the Secretary to:

“...make... a final determination that a person has engaged or is engaging in unlicensed practice [of a licensed health profession and]... may issue a cease and desist order ...[and] impose a civil fine...”

The DOH implies in its Response Brief that the Secretary has subject matter jurisdiction of *all* adjudications related to unlicensed practice of medicine by **Category 2** professions (under a “full authority board” disciplinary authority), **Category 1** professions (without a board with the Secretary of DOH as the disciplinary authority) and **Category 3** professions (unregulated health-related professions) under RCW 18.130.190, regardless of whether a “Presiding Officer” employed by the DOH (and referred to by DOH as a “Health Law Judge”¹⁵), or an Administrative Law Judge (ALJ) with the Office of Administrative Hearings (OAH),

¹⁵ DOH notes that RCW 34.05 uses the term “Presiding Officer” for the person who conducts state agency adjudicative proceeding, then supplements the Record with the fact that DOH calls its RCW 34.05 officials “Health Law Judges.” There is no statutory authority for “Health Law Judges” at DOH, and the use of the term might lead persons having their rights adjudicated to think that HLJs are unbiased and independent of investigators and officials at the DOH. In fact, an HLJ is an employee of the DOH and is required to sign a DOH employment agreement that provides that the HLJ “accept(s) Departmental limitations on independence of judgment.” (Appendix No. 4) This raises constitutional issues of procedural due process and taking of property rights (the right to practice one’s chosen profession and the right not to have monies taken through fines without procedural due process.)

who acts under the authority of RCW 34.12 (independent of DOH), is used as the tribunal for an adjudication.¹⁶

Pursuant to RCW 18.130.050(8),¹⁷ the disciplining authorities (the Secretary or the “full authority board”) have the authority “to use a presiding officer as authorized in RCW 18.130.095(3) or [an ALJ in] the OAH as authorized in RCW 34.12 to conduct hearings.” In other words, an ALJ under RCW 34.12 *must* be used unless RCW 18.130.095(3) authorizes a Presiding Officer.

RCW 18.130.095(3) provides in relevant part:

“*Only upon the authorization of a disciplining authority identified in RCW 18.130.040(2)(b) [“full authority board”], the secretary, or his or her designee, may serve as the presiding officer for any disciplinary proceedings of the disciplining authority authorized under this chapter. The presiding officer shall not vote on [implies board vote] or make any final decision in cases pertaining to standards of practice or where clinical expertise is necessary...*” (Emphasis supplied.)

Thus, a “full authority board” *must authorize* the Secretary or her designee to serve as the Presiding Officer for any disciplinary proceedings *within the jurisdiction of the authorizing disciplining authority*. Under RCW 18.130.095(3), a Presiding Officer can only be used in a *disciplinary proceeding adjudication*. If, as the DOH has asserted, an adjudication of a person for the unlicensed practice of medicine is not a board disciplinary proceeding (RB-13-14), then the “full authority board” cannot

¹⁶ OAH’s website www.oah.wa.gov does not include DOH as an agency that ever uses ALJ’s at OAH. Further, DOH admits that it does not use the OAH ALJ’s because of: “.....scheduling problems.....” Appendix No. 5

¹⁷ Due to amendments, the correct cite is now RCW 18.130.050(10). To avoid confusion, references to this section will continue to be cited as subsection (8).

authorize the Secretary or her designee to act as a Presiding Officer in a “practice of medicine without a license” matter. Whether someone is “practicing medicine” relates to both standards of practice and clinical expertise.¹⁸ However, even if an adjudication of a person charged with the unlicensed practice of medicine is a “disciplinary proceeding,” the “full authority board” has limited subject matter jurisdiction itself: over the *licensed* members of its profession who are subject to regulations administered by the “full authority board.”

The “full authority board” can only authorize the Secretary or her designee to act as a Presiding Officer over a disciplinary proceeding of a person licensed by the authorizing “full authority board.” However, no “full authority board” can authorize the Secretary or her designee to be a Presiding Officer over a licensed person *not* subject to the regulations administered by the authorizing “full authority board” (e.g. an acupuncturist for which no regulatory board exists). Because Tasker’s EDT/CEDS health care practice is not regulated by a “full authority board,” no “full authority board” can authorize the Secretary or her designee to act as a Presiding Officer to adjudicate whether Tasker was practicing medicine without a license. For Tasker’s EDT/CED practice, and other unregulated health care practices (those *not* listed in RCW 18.130.040(2), RCW 18.130.050(8) (through its reference to RCW

¹⁸ RCW 17.71.011- see footnote # 14. There is a need for medical expertise to determine whether an unregulated profession, in practice, is within the exclusive scope of “practicing medicine.”

18.130.095(3)) *requires* adjudicative hearings be conducted by ALJ's as appointed by the OAH under RCW 34.12.

The DOH Secretary relies on RCW 18.130.050(8) and RCW 18.130.095(3) for determining UDA procedures. These two statutes plainly require that adjudication of unregulated practitioners accused of practicing medicine without a license be conducted by ALJ's at OAH under RCW 34.12.¹⁹

The ALJ's at OAH are the adjudicative tribunals with subject matter jurisdiction over various state agencies' controversies as identified by state statutes, including the prohibition against the unlicensed practice of medicine in RCW 18.130.190, if the DOH has subject matter jurisdiction to adjudicate the practice of medicine by unregulated health professions. In essence, DOH is asserting that it has subject matter jurisdiction regardless of who the actual adjudicator is, and, therefore, the HLJ in this case has subject matter jurisdiction because the DOH has it. Would it follow that a secretary or janitor at DOH, both employees of DOH, would have subject matter jurisdiction as the tribunal deciding a practice of medicine case? No, the statutes limit the DOH's use of a Presiding Officer/HLJ to "full authority board" disciplinary matters when the full authority board "authorizes" the DOH Secretary to make such a designation. RCW 18.130.095(3).

¹⁹ These two statutes also require that disciplinary hearings for licensed practitioners without a "full authority board," i.e. **Category 2** licensed health care practices under the disciplinary authority of the DOH Secretary (RCW 18.130.040(2)(a)), be conducted by ALJ's at OAH under RCW 34.12. No **Category 2** practice is at issue in this case.

Furthermore, RCW 18.130.190(2) requires:

“...All proceedings shall be conducted in accordance with chapter 34.05 RCW.”

RCW 34.05.425(1) sets out the limits on use of Presiding Officers:

“Except as provided in subsection (2) of this section [not applicable], in the discretion of the agency head [DOH Secretary], the presiding officer in an administrative hearing shall be:

- (a) The agency head [DOH Secretary] or one or more members of the agency head [not applicable];
- (b) *If the agency has statutory authority to do so*, a person other than the agency head or an *administrative law judge* designated by the agency head to make the final decision and enter the final order; or
- (c) One or more *administrative law judges* assigned by the office of administrative hearings in accordance with chapter 34.12 RCW.” (Emphasis added.)

RCW 34.05.425(1)(b) requires specific statutory authority for the DOH Secretary (agency head) to designate a Presiding Officer (HLJ) to make a final decision and enter a final order. There is no other statutory authority for the DOH Secretary to designate a Presiding Officer (or HLJ) for adjudications (**Categories 1, 2 or 3**) for practice of medicine without a license.²⁰ The Presiding Officer/HLJ tribunal in this case was *without* subject matter jurisdiction because his delegation was not in compliance with state law.

V. Due Process and Fairness

²⁰ There is authority under RCW 18.130.095(3) for the DOH Secretary to use a Presiding Officer for disciplinary proceedings for **Category 1** professions (licensed with a “full authority board”), but only upon “authorization” from the relevant board.

Rule of Appellate Procedure 2.5(a)(3), as set out above, also permits an appellant to raise an issue at any time on review if there has been a manifest error affecting a constitutional right.

Due process and fairness are offended by an agency acting as investigator, prosecutor and adjudicator of a contested matter, the result of which may be loss of the fundamental right to practice a chosen profession as well as the imposition of substantial monetary fines and public disgrace.

The OAH was created to provide independent adjudication for state agencies. This system provides due process and fairness. Yet the DOH has wholesale rejected the OAH and its independent ALJ's.²¹ (Appendix No 5)

The use of the term "Health Law Judge" by the DOH misleads the health care practitioner facing a cease and desist order and a fine into believing he/she is getting an independent decision maker. The DOH also misleads the public into believing that the public's interests are being protected by an independent decision maker. In the case of unregulated health care practitioners, these adjudications regularly and predictably result in cease and desist orders against the unregulated practitioner. The public is being deprived of access to certain health care modalities based on the DOH policy of systematically eliminating (effectively legislating DOH policy), through cease and desist orders and fines to all healthcare practices that are not licensed by the state.

²¹ See footnote # 16.

Dubusschere, prior to his employment as a DOH HLJ, was an Assistant Attorney General who prosecuted disciplinary cases (including practice of medicine without a license matters). (Appendix No 4, 6) The reasonable perception is that Dubusschere is biased toward his former client's positions, however, all question of Dubusschere's independence is dispelled by review of the employment contract that he signed upon commencing employment with the DOH. It specifically requires him "to accept Departmental limitations on independence of judgment." (Appendix No 4) This single employment clause effectively names the DOH (a party to the case, in *Tasker*) as the *actual* Presiding Officer. And it contractually precludes Mr. Debusschere from making "*the final decision and enter[ing] the final order*" (as required by RCW 34.05.425) in *Tasker*.

Who did the Secretary *actually* designate to preside over *Tasker* in fulfillment of her duties? The answer is, she designated herself; by assigning another DOH employee who deferred his independence of judgment to hers in exchange for his employment with the DOH and took her place as Presiding Officer/HLJ , to render "*the final decision and enter the final order*" in Tasker. (Appendix No.1)

Dubusschere's order in this case is signed by him. This is in direct conflict with RCW 34.05.425 relating to Presiding Officers, which requires that if a Presiding Officer is used for an administrative hearing, he must be "designated by the agency

head to *make the final decision and enter the final order.*” (Emphasis added.) RCW RCW34.425(1)(b). A person who is prohibited by job description and employment contract from exercising his independent judgment cannot also be “designated . . . to make the final decision.” This is why Tasker asks for an order declaring that the DOH has violated Tasker’s due process.

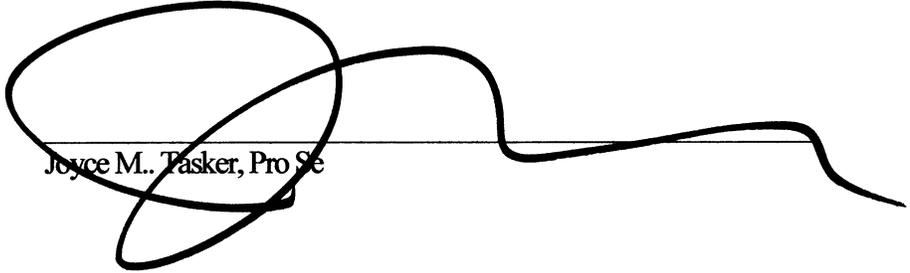
The bottom line is that Tasker was deprived of due process in the quasi-judicial forum provided to her. She was ordered to cease her profession and she was ordered to pay \$10,000²² in a constitutionally flawed process.

V. **Conclusion.**

For the reasons set out above, this court should reverse the judgment of the Superior Court and declare that the DOH did not have jurisdiction to impose a fine upon Appellant, Tasker.

Dated this 17th day of February 2009.

Joyce M.. Tasker, Pro Se



²² RCW 18.130.190(8) provides that: “All fees, fines, forfeitures, and penalties collected or assessed by a court because of a violation of this section shall be remitted to the health professions account.” This provision creates a serious conflict of interest for the DOH Secretary who will have a budget infusion from each and every fine imposed.

COURT OF APPEALS DIV. II
STATE OF WASHINGTON
Case No.38844-8-II

JOYCE TASKER,

Appellant,

v.

WASHINGTON STATE DEPT. OF HEALTH

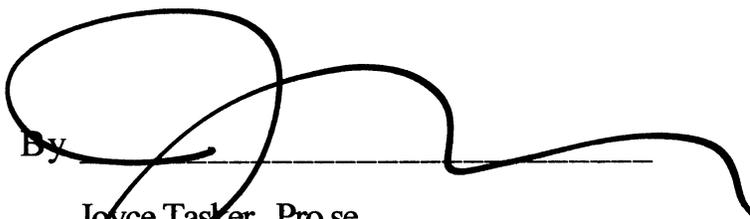
Respondent

FILED
COURT OF APPEALS
DIVISION II
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STATE OF WASHINGTON
BY [Signature]
DEPUTY

CERTIFICATE OF SERVICE

I certify that on February 17, 2009 I electronically transmitted by e-mail and by USPS copies of Appellant Tasker's Motion To File Reply Brief and Reply Brief to Richard McCartan, AAG.

DATED this February 17, 2009.

By 

Joyce Tasker, Pro se
6279 Marble Vly. Basin Rd.
Colville WA 99114-9575
509-684-5433 / energieswork@gotsky.com

Appendix
No 38844-8-II

Exhibit II
COA Case Div II
No. 38844-8-II

STATE OF WASHINGTON
DEPARTMENT OF HEALTH
ADJUDICATIVE SERVICE UNIT

In the Matter of the Unlicensed)
Practice of Medicine and Veterinary) Docket No. 04-06-B-1079UR
Medicine of:)
JOYCE M. TASKER,)
Respondent.) ORDER ON MOTIONS FOR
SUMMARY JUDGMENT,
AND ORDER TO CEASE AND DESIST,
AND ORDER TO PAY FINE

APPEARANCES:

Respondent, Joyce M. Tasker, pro se

Department of Health Unlicensed Practice Program (the Program), by
The Office of the Attorney General, per
Richard McCartan, Assistant Attorney General

PRESIDING OFFICER: Arthur E. DeBusschere, Health Law Judge

This matter came before the Presiding Officer on cross motions for summary judgment filed by the parties.

I. PROCEDURAL FINDINGS AND MOTION FOR SUMMARY JUDGMENT

1.1 On November 7, 2005, the Respondent filed a Motion for Summary Judgment. The exhibits, which were not numbered or paginated, were filed November 10, 2005.

1.2 On November 21, 2005, the Presiding Officer issued an Order on Briefing Schedule for Motions for Summary Judgment and Order Rescheduling Prehearing Conference. The Presiding Officer scheduled completion dates for filing of summary judgment motions, legal memorandums and exhibits. *Prehearing Order No. 16.*

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JUDGMENT, ORDER TO CEASE AND
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1.3 On November 28, 2005, the Respondent filed a Motion for Summary Judgment REVISED. The Respondent attached documents, which were not numbered or paginated.

1.4 On December 1, 2005, the Respondent filed a Supplemental Motion to Summary Judgment REVISED. The Respondent attached documents, which were not numbered or paginated.

1.5 On December 7, 2005, the Presiding Officer issued an Order Granting Extension to File Summary Judgment Motion. The Presiding Officer granted the Program an additional week to file its motion and provided additional time for the Respondent to file responding memorandums. *Prehearing Order No. 18.*

1.6 On December 12, 2005, the Department filed a Motion for Summary Judgment and Supporting Memorandum. The Department attached exhibits numbered 1-20, which were filed on November 13, 2005. [Hereinafter referred to as Program's Exhibits Nos. 1-20.]

1.7 On December 16, 2005, the Program filed a Reply to Respondent's Motion for Summary Judgment.

1.8 On December 21, 2005, the Respondent filed a Reply to Program's Response to Respondent's Summary Judgment and Summary Judgment Revised.

1.9 On December 21, 2005, the Respondent filed a Response to Program's Motion for Summary Judgment.

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1.10 On December 29, 2005, the Respondent filed a Response to Program's Motion for Summary Judgment Revised. The Respondent attached exhibits numbered 1-10. [Hereinafter referred to as Respondent's Exhibits Nos. 1-10.]

1.11 On December 29, 2005, the Respondent filed a Reply to Program's Response to Respondent's Summary Judgment and Summary Judgment Revised.

II. MOTIONS FOR SUMMARY JUDGMENT AND ARGUMENT OF THE PARTIES

2.1 The Program requests that the Presiding Officer determines as a matter of law that the Respondent has engaged in unlicensed practice of medicine and veterinary medicine. The Program requests that the Presiding Officer issue a cease and desist order and requires that the Respondent pay a fine. The Program maintained that there are no material facts in dispute, because the Program's motion for summary judgment relies on the most part from the Respondent's website and statements by her from her deposition.

2.2 In opposition to the Program's motion, the Respondent moves for summary judgment in her favor and seeks dismissal of the Program's action against her. The Respondent argued that the applicable statutes are ambiguous and that the legislature intended to allow alternative non-traditional medical modalities outside of medicine as practiced by physicians. The Respondent also argued that the Uniform Disciplinary Act, chapter 18.130 RCW, only applies to the professions listed in the Act and that she does not need a license. The Respondent further argued that the electrodermal testing (EDT), which she performs, is safe, because the instrument that

she uses, a biofeedback machine, has been approved by the Federal Food and Drug Administration. Finally, the Respondent argued that the Program's policy violates the due process clause of the Fourteenth Amendment because it unduly burdens the Respondent's fundamental right and is not justified by any compelling state interest under the UDA.

III. FINDINGS OF FACT

3.1 Joyce Tasker, the Respondent, resides in Colville, Washington. She has never held a credential to practice as a health care professional in the state of Washington. On September 25, 2001, the American Institute of Energy Medicine issued to the Respondent a certificate stating that she has a professional title of "Technician of BioEnergetic Medicine and Computerized Electro Dermal Screen." *Respondent's Exhibit No. 2.*

3.2 The Respondent has two businesses called "Energieswork" to treat persons and "Dog Patch" to treat animals. There is a website for each business. The primary service for this business is electrodermal testing (EDT). In performing this testing, the Respondent employs two devices, which do the same, the Orion and a more recent model, the Asyra. The Respondent bought her first EDT device (Orion) three years ago, and then upgraded to a newer machine (Asyra) that she now uses in her practice. The Respondent has been offering this testing since 2003 when the Department received a complaint against her. In her business, the EDT testing is also described as an Orion session. The EDT device can also be called a Digital Conductance Meter (DCM).

3.3 EDT devices typically operate as follows:

The device emits a tiny direct electric current . . . that flows through a wire from the device to a brass cylinder covered by moist gauze, which the patient holds in one hand. A second wire is connected from the device to a probe, which the operator touches to "acupuncture points" on the patient's other hand or a foot. This completes a low-voltage circuit and the device registers the flow of current.

The information is then relayed to a gauge or computer screen that provides numerical readout on a scale of 0 to 100. According to Voll's theory: readings from 45 to 55 are normal ("balanced"); readings above 55 indicate inflammation of the organ "associated" with the "meridian" being tested; and readings below 45 suggest "organ stagnation and degeneration." The size of the number actually depends on how hard the probe is pressed against the patient's skin.

Program's Exhibit No. 4, p. 2.

3.4 The Federal Food and Drug Administration (the FDA) determined that the Orion, a Digital Conductance Meter, was substantially equivalent to devices marketed prior to May 1976 when the Medical Device Amendment was enacted. The Orion was described to the FDA as a biofeedback device. The FDA noted that the Digital Conductance Meter was used for relaxation training only. Even though the Orion device was found to be substantially equivalent and can be marketed, it cannot be promoted in any way to state that the device was approved by the FDA. Respondent's Exhibit No. 1, Letter to James Clark from Thomas Callahan, March 14, 1996. There is no information on the Respondent's website that the Respondent was offering biofeedback services.

3.5 When the EDT device (DCM) is connected to a computer with the appropriate software, the computer monitor provides a numerical readout of the electrical current. The Respondent described this testing as Computerized

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Electrodermal Screening (CEDs). On her website, the Respondent makes the following claim:

The meridian energy flow carries with it information about internal organs that can be used in diagnosis. This is the basis of the Computerized Electrodermal Screening (CEDs). The device used in CEDs is an electrodermal screening device, which works by measuring electrical resistance and polarization at acupuncture points and meridians. Through these safe, skin-level measurements, it is possible to analyze the bio-energy and bio-information produced by internal organs and systems. . . . CEDs is one of the most thorough, powerful, and promising modern, holistic medical/diagnostic methodologies. CEDs addresses the body holistically for a number of reasons: A standard of CEDs examination enables the operator to quickly and safely collect information on 40 different individual systems. In other words, all of the body's individual parts are covered in an examination. The bio-information signal read by the CEDs is a very direct and true description of the condition of the body because it is created by the body. . . . Product testing allows the operator to test any and every type of medication on the individual patient, including those made from herbs, metals, nosodes, or sarcodes. This allows the operator to explore all types of available treatment.

Program's Exhibit No. 13, p. 1 (Emphasis added).

3.6 The Respondent's website shows that she is offering to practice medicine. She solicits clients for EDT testing, providing instruction for sending to her blood and saliva samples for testing, stating her fee one hundred and fifty dollars (\$150.00) for human testing, and directing clients to fill out three forms: a "health form," a "disorder rating sheet" and a "release form". The location for correspondence was the Respondent's residence. The testing is done within the state of Washington and, at times, on Indian reservation land.

3.7 The Respondent claimed that through her Orion or Asyra devices, she can test any and every type of medication and can explore all types of available treatment.

For the combined diagnostic, prescription and dispensing services, the Respondent performs the testing in two ways, (1) by testing persons directly and (2) by testing persons' blood or saliva samples that were sent to her in the mail. After the EDT, the Respondent offers to identify appropriate dosages of a homeopathic infusion remedy and then sends the remedy by return mail.

3.8 On her website, the Respondent offers to interpret and evaluate the EDT results. She offers to identify medical illnesses or conditions through an "energy signature" obtained during the testing. The Respondent reported that she advises her clients to follow her recommendations and she provides them medicinal preparations. On her website, the Respondent reports that she conducts follow-up visits. At the follow-up visits, the Respondent adjusts the treatment by providing additional "tinctures" based on the follow-up EDT testing.

3.9 The Respondent makes a diagnosis through EDT testing to identify in persons an "electromagnetic signature, the immaterial electromagnetic signature of all kinds in their bodies, whether it's Parkinson or something else." *Program's Exhibit No. 5*, p. 98. The Respondent claimed that these electromagnetic signatures "pile up in the body" like "a worm that's activated in your computer." *Program's Exhibit No. 5*, p. 99. She maintained that "it's a very complicated process [that] even the most brilliant physicists do not yet understand." *Program's Exhibit No. 5*, p. 100. She claimed:

You know my testing is for electromagnetic signatures. And so if I see the electromagnetic signature of, let's say a pituitary tumor, then if the person's question is "could that be physical," then I would have to tell them what some of the physical indications would be, but it isn't telling them that they have the physical problem. It's just indicating to a person that these

are the physical things that they would notice if it was – if it was a physical thing. But I don't know, because I test for electromagnetic signatures.

Program's Exhibit No. 5, p. 107.

So if a person comes in and they have an electromagnetic signature, and the [EDT] computer says it's the electromagnetic signature as whatever it may be, say porphyria or whatever, then there is an electromagnetic signature match.

Program's Exhibit No. 5, p. 94.

3.10 To remedy ill health or to cause change in the client's condition, the Respondent creates a tincture, or preparation, based upon the readings from the Orion or Asyra and her analysis of them. In her deposition, the Respondent when answering questions about a tincture stated:

Q: Okay. So you create a tincture which is – what is – can you describe what the tincture is? I mean what is it – what form does it take?

A: The tincture is water and alcohol, or it is a commercial homeopathic preparation, and the recording of the electromagnetic fields is imprinted into that tincture.

Q: The record being?

A: The electromagnetic fields that are detected in the client and stored in the computer are then essentially downloaded into a tincture. And the animal is either given the tincture, or the person, if it happens to be a person, takes their own electromagnetic fields by taking it imprinted into the tincture.

Q: Okay. And what is the form that the downloaded energy takes? I mean, how is it imprinted? How does that work as a matter of mechanics or physics?

A: It is all – it's all – let me see what would be the right word. All of the signatures are stored, just like all the information in a computer, in zeros and ones. And each electromagnetic signature has its own pattern of zeros and ones, and then that's how it's stored onto the computer. And the computer just imprints the frequencies or the force fields of those patterns that are —than come from the client, imprints it into the tincture.

Q: And how do you know what tincture to use?

Program's Exhibit No. 13, p. 7. By providing this EDT for "JM", the Respondent undertook the diagnosis of a disease and an illness and prescribed a medicinal preparation to be used by him.

3.12 The website contained additional testimonials concerning clients S.M., R.G., J.T., K.V., J.R., J.W., L.M., N.B.D. and D.B.

S.M. had a thyroid condition and stomach pains. After an Orion, S.M. experienced immediate relief from "long-term severe cramping."

The Respondent reported that for the first time in 30 years, after undergoing Orion sessions, R.G.'s psoriasis does not "break out" when he goes off his medication.

J.T. was cured of porphyria, chemical sensitivity, and kidney/gall bladder cancer.

The Respondent reported that K.V. suffered from diabetes and a stroke. His physician gave him only nine months to live. After the Respondent's Orion (CEDs) testing and the Respondent's treatment, K.V. achieved improved circulation, increased mobility and weight loss, and could discontinue most of his medications.

J. R. claimed that his physician confirmed the results of the Respondent's "liver lab workup." J.R. experienced a dramatically-improved blood-test result after one Orion session. The blood tests results were even posted on the website.

J.W. experienced better "oxygen levels" from Orion for one week.

L.M. claimed that the Respondent's "Orion balancing" improved his "thinking" and made it easier to walk when he woke in the morning. The Respondent identified L.M.'s "pituitary tumor" and then he stopped urinating too frequently because of the "balancing." The treatment also cured L.M.'s multiple chemical sensitivity and his pain "in the area of the gallbladder."

After treating her cat (an animal), N.B.D. stated that the Respondent treated him for a "really bad" lymph system and thyroid.

The Respondent treated D.B., a seriously-ill cancer patient, with an Orion session.

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Program's Exhibit No. 13, pp. 9-12. The Respondent posted these testimonials in an attempt to attract new customers by presenting herself as a healer.

3.13 On her website and in a similar fashion, the Respondent solicited submissions of saliva and blood samples from animals for EDT to identify pathogens, toxins, and organ and emotional dysfunctions. The Respondent quoted a fee of one hundred fifteen dollars (\$115.00) for these combined diagnostic, prescription, and dispensing services. The Respondent claims that by using EDT, she is able to prescribe various remedies for the animals to cure their determined ailments.

3.14 The Respondent included "case histories" for eleven (11) dogs and cats that underwent electrodermal testing. Through these case histories, the Respondent states and implies that through EDT she has successfully diagnosed and/or treated animals for variety of conditions that most commonly would be treated by a veterinarian, including the following: (1) "[S]evere candida problem brought on by Thimerosal (Vaccine Additive)"; (2) Growing hair on bald spots; (3) Regain of "motor function" after a "major bi-lateral stroke"; (4) Reduction of a "lump in the groin area"; (5) Improved mobility; (6) Weaned off codeine; (7) Binge eating; (8) Hyperactivity; (9) Improved disposition; (10) Restored health; (11) Migraines; (12) Back pain; (13) "Emotional problems"; (14) Restored energy; (15) Weight gain; and (16) Kidney failure. *Program's Exhibit No. 13*, pp. 16-26. Regarding a collie named "Shasta", the Respondent claimed that after just one Orion test and infusion drops of healing energies, Shasta's liver enzymes improved dramatically. *Program's Exhibit No. 13*, p. 21.

3.15 Using the Orion, the Respondent has performed EDT on between 10 to 50 pets. The pet owner sends by mail the saliva from the animal on a Q-tip. *Program's*

Exhibit No. 5, p. 16-17. When the Respondent personally sees an animal with the owner, the EDT is performed by placing the probe in the hand of the owner, who acts as a “surrogate for delivering the animal’s electromagnetic fields into the computer.”

Program's Exhibit No. 5, p. 21. The Respondent offered to identify an appropriate dosage of homeopathic infusion remedy, based upon such testing results and send the remedy by return mail.

3.16 On her website, the Respondent represents her ability and willingness for a fee to diagnose and treat animals. Further, the Respondent has diagnosed animal diseases and injuries and prescribed treatment for them.

IV. CONCLUSIONS OF LAW

4.1 The Presiding Officer shall rule on motions. WAC 246-10-403; WAC 246-10-602(2)(e). An administrative agency may employ summary procedures, and may enter an order summarily disposing of a matter if there is no genuine issue of material fact. *Asarco v. Air Quality Coalition*, 92 Wn.2d 685, 696-697 (1979).

4.2 Summary Judgment is appropriate where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Wilson v. Steinbach*, 98 Wn.2d 434, 437 (1982) (citations omitted).

4.3 In considering a motion for summary judgment, the health law judge must consider the facts in light most favorable to the nonmoving party, and grant summary judgment if reasonable persons could reach only one conclusion. *Id.*

4.4 The moving party carries the initial burden of show there is no genuine issue of material fact, but once that burden has been met, the burden shifts to the

or injury. This prohibition shall include, but not be limited to, using any method or device to identify pathogens, toxins, oral or emotional dysfunction, "energy imbalances", or "electromagnetic signatures" within an animal's body. The prohibition applies whether or not the service is offered or performed in return for compensation.

5.3.3 The Respondent shall refrain from engaging in any other activity, which constitutes the unlicensed practice of a health care profession in violation of RCW 18.130.190.

5.4 The Respondent shall pay an administrative fine to the Program Manager in the amount of \$10,000.00 (ten thousand dollars) within 180 days (one hundred and eighty days) of the entry of this Order, PROVIDED THAT \$6,000.00 (six thousand dollars) shall be SUSPENDED on the condition that the Respondent timely pays \$4,000.00 (four thousand dollars) and refrain from any future unlicensed practice violation. The payment shall be made payable to the Department of Health and sent to the following address:

Unlicensed Practice Program
PO Box 1099
Olympia, WA 98507-1099

Dated this 25th day of January, 2006.



ARTHUR E. DeBUSSCHERE, Health Law Judge
Presiding Officer

CLERK'S SUMMARY

Charge	Action
RCW 18.71.021	Violated
RCW 18.92.070	Violated

NOTICE TO PARTIES

This order is subject to the reporting requirements of RCW 18.130.110, Section 1128E of the Social Security Act, and any other applicable interstate/national reporting requirements. If adverse action is taken, it must be reported to the Healthcare Integrity Protection Data Bank.

Either Party may file a **petition for reconsideration**. RCW 34.05.461(3); 34.05.470. The petition must be filed within 10 days of service of this Order with:

Adjudicative Service Unit
PO Box 47879
Olympia, WA 98504-7879

and a copy must be sent to:

Unlicensed Practice Program
PO Box 47874
Olympia, WA 98504-7874

The petition must state the specific grounds upon which reconsideration is requested and the relief requested. The petition for reconsideration is considered denied 20 days after the petition is filed if the Adjudicative Service Unit has not responded to the petition or served written notice of the date by which action will be taken on the petition.

A petition for judicial review must be filed and served within 30 days after service of this order. RCW 34.05.542. The procedures are identified in chapter 34.05 RCW, Part V, Judicial Review and Civil Enforcement. A petition for reconsideration is not required before seeking judicial review. If a petition for reconsideration is filed, however, the 30-day period will begin to run upon the resolution of that petition. RCW 34.05.470(3).

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The order remains in effect even if a petition for reconsideration or petition for review is filed. "Filing" means actual receipt of the document by the Adjudicative Service Unit. RCW 34.05.010(6). This Order was "served" upon you on the day it was deposited in the United States mail. RCW 34.05.010(19).

FOR INTERNAL USE ONLY: (Internal tracking numbers)
Program No. 2003-06-0016

nonmoving party to establish otherwise. *Dutton v. Washington Physicians*, 87 Wn. App. 614, 621 (1997) citing *Hiatt v. Walker Chevrolet Co.*, 120 Wn.2d 57, 66 (1992).

4.5 In this case, the Respondent is not objecting to the statements or representations made on her website or statements made in her deposition. The facts obtained from these and other documents, not objected to, form a basis to conclude that there are no genuine issues of material fact. Further, in support of the Respondent's summary motion, the Respondent's seeks summary judgment in her favor on the basis of legal arguments. The Presiding Officer can consider the undisputed facts and apply the appropriate law here.

4.6 The provisions in RCW 18.130 (the Uniform Disciplinary Act) are intended to "assure the public of the adequacy of professional competence and conduct in the hearing arts." RCW 18.130.010. To carry out the provisions of the UDA, the Program has authority to issue Cease and Desist orders against persons who engage in the practice of various health care professions without having a required license to do so.

The secretary may issue a notice of intention to issue a cease and desist order to any person whom the secretary has reason to believe is engaged in the unlicensed practice of a profession or business for which a license is required by the chapters specified in RCW 18.130.040.

RCW 18.130.190(2). In this case, the Program issued upon the Respondent a Notice of Intent to issue a cease and desist order alleging that the Respondent's conduct constituted the unlicensed practice of medicine and veterinary medicine.

4.7 Where it bears on the issues presented, the agency's experience, technical competency, and specialized knowledge may be used in the evaluation of

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evidence. RCW 34.05.461(5). In evaluating the evidence here, the Presiding Officer employed the agency's expertise.

Respondent's Motion for Summary Judgment.

4.8 The Respondent argued that this action should be dismissed because her conduct of using an EDT device was outside the scope of the UDA and so the Program had no authority over her EDT businesses. The practice of medicine is defined under chapter 18.71 RCW:

Definition of practice of medicine — . . . A person is practicing medicine if he does one or more of the following:

- (1) Offers or undertakes to diagnose, cure, advise or prescribe for any human disease, ailment, injury, infirmity, deformity, pain or other condition, physical or mental, real or imaginary, by any means or instrumentality;
- (2) Administers or prescribes drugs or medicinal prescriptions to be used by other person;

RCW 18.71.011(1) & (2).

4.9 The Respondent's argument that her EDT activity does not come under this statute is without merit. This statute, RCW 18.71.011(1) & (2), applies whenever someone purports to diagnose or treat a human illness or condition. The plain language of the statute does not differentiate between types of diagnosis or treatment; it covers them all. The statute's broad definition also applies to types of "alternative" or "drugless" diagnosis or treatment that are not traditionally offered by physicians. The definition applies to diagnosis or treatment that allegedly is based on some type of "non-medical" theory; that is, under the definition, the theory behind the diagnosis or treatment is irrelevant.

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4.10 The Respondent's argument that the applicable statutes are ambiguous and that the legislature intended to allow alternative non-traditional medical modalities is also without merit. In interpreting such statutes, the Presiding Officer can obtain guidance from relevant case law:

The meaning of a statute is a question of law that is reviewed de novo. The Court's fundamental objective in determining what a statute means is to ascertain and carry out the Legislature's intent. If the statute's meaning is plain on its face, then courts must give effect to its plain meaning as an expression of what the Legislature intended. A statute that is clear on its face is not subject to judicial construction.

State v. J.M., 144 Wn.2d 472, 480 (2001) (citations omitted). The meaning of the applicable statutes here regarding the practice of medicine (RCW 18.71.011(1); RCW 18.71.021), regarding the practice of veterinary medicine (RCW 18.92.010; RCW 18.92.070) and the UDA (RCW 18.130.190) are plain on their face. They are clear and not ambiguous. Thus, it is not necessary, as argued by the Respondent, to ferret out legislative intent to determine the unlicensed practice of these professions.¹

4.11 The Respondent argued that RCW 18.71.011(1) should not be construed to allow only licensed physicians to offer healing services is in part correct:

The practice of dentistry, osteopathic medicine and surgery, nursing, chiropractic, podiatric medicine and surgery, optometry, naturopathy, or any such other healing art licensed under the methods of means permitted by such license.

¹ The Program's footnote is also applicable here when it stated: "On her website, Ms. Tasker urged support of House Bill 2355, a radical revision of the law that went no where in the legislature." *Program's Exhibit No. 13*, p. 13. "Section 3 of the 2004 bill would have eliminated the licensing requirement, except for persons performing the most serious medical procedures, so long as the providers made certain disclosures." *Program's Exhibit No. 14*, pp. 4-5 (House Bill 2355, 58th Legislature, 2004 Regular Session (2004)). "If passed, the bill apparently would have allowed Ms. Tasker to perform EDT without a license. However, because the bill did not pass, Ms. Tasker remains subject to licensure." *Program's Motion for Summary Judgment and Supporting Memorandum*, p. 8, ftn 22.

RCW 18.71.030(4) (Emphasis added). Under this statute, a particular healing art may be practiced by non-physicians who are licensed to conduct the activity in accordance with the terms of the license. Contrary to the Respondent's argument, nothing in RCW 18.71 states or even implies that unlicensed persons, such as the Respondent, should be allowed to practice a healing art. Further, under RCW 18.71.030, there are fourteen (14) listed exemptions from the medical licensing requirement, none of which exempt the practice of "alternative medicine", "drugless healing" or the use of EDT devices.

4.12 The Respondent argued that RCW 18.71.011(1) applies only to licensed physicians is without merit. Under RCW 18.130.190, the Program has authority to issue a cease and desist order against anyone who has "engaged in the unlicensed practice of a business or profession for which a license is required by the chapters specified in RCW 18.130.040." One of those professions is the practice of medicine under chapter 18.71 RCW. RCW 18.130.040(2)(b)(ix). Another one of those professions is the practice of veterinary medicine under chapter 18.92 RCW. RCW 18.130.040(2)(b)(xiv).

4.13 The Respondent argued that the EDT, which she performs, is safe, because the instruments that she used, a biofeedback machine, has been approved by the Federal Food and Drug Administration (FDA). As part of this argument, the Respondent asserted that because her EDT activity is safe, there is no need for licensing and the statutes here do not apply. This argument is also without merit. The FDA cleared the DCM as a biofeedback device for relaxation training, but not for other

purposes. The EDT devices like the biofeedback devices are safe in that they emit a very low voltage. Nevertheless, assuming that the Respondent's EDT devices are the same as those that perform relaxation training, the Respondent's use of EDT devices has been done in a manner not intended by the FDA and in a manner of practicing unlicensed medicine and unlicensed veterinary medicine.

4.14 Further, there are dangers in allowing such unlicensed practice. The unlicensed practitioner will (1) offer care that is harmful to a customer's health because the practitioner lacks the expertise; (2) cause persons not to seek needed health-care advice from qualified professionals; and (3) defraud customers by providing worthless treatment in exchange for the customer's money. *See Respondent's Exhibit 3*, p. 5. In *Griffith v. Dept. of Motor Vehicles*, 23 Wn. App. 722 (1979), the court held that the legislature has the constitutional authority to regulate health-care licensing. By issuing such laws, the legislature is exercising the state's police power to ensure public health, safety, and welfare. "It is a legitimate regulatory expression where the legislature seeks to prevent the inadequately trained and uneducated from practicing in areas in which competency is lacking." *Griffith v. Dept. of Motor Vehicles*, 23 Wn. App. at 730.

4.15 The Respondent argued that the "Disclaimer" on her website sufficiently informs the public that she is not offering medical or veterinary care. This argument is without merit. Nothing either in RCW 18.71 (Physicians) or in RCW 18.92 (Veterinary Medicine) allows a person to avoid the licensing requirement simply by making a disclaimer. Otherwise, persons could do anything they wanted as long as said they

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were not practicing medicine or veterinary medicine. The licensing requirement would be so easy to avoid that it would become meaningless.

4.16 Finally, the Respondent argued that the Program's policy violates the due process clause of the Fourteenth Amendment, because it unduly burdens her fundamental rights and is not justified by any compelling state interest. The Presiding Officer is required to follow the applicable rules and statutes. WAC 246-10-602(3)(a). The Presiding Officer lacks authority to declare a statute unconstitutional. WAC 246-10-602(3)(c).

4.17 In conclusions, the Respondent has failed to show that her EDT activity performed on persons and on animals is outside the scope of the UDA and that the Program lacks the authority to maintain this unlicensed practice action against her. For the above reasons, the Respondent's motion for summary judgment seeking dismissal of this action should be denied.

Program's Motion for Summary Judgment.

4.18 Under RCW 18.130.190, the Program has authority to issue Cease and Desist orders against persons who engage in the practice of various health care professions without having a required license to do so. RCW 18.130.190(2). In this case, the Program had authority to issue a Notice of Cease and Desist Order against the Respondent for the unlicensed practice of medicine and veterinary medicine.

4.19 The statutes define the practice of medicine and require those who practice medicine to have a license:

Definition of practice of medicine — . . . A person is practicing medicine if he does one or more of the following:

ORDER ON MOTIONS FOR SUMMARY
JUDGMENT, ORDER TO CEASE AND
DESIST, AND ORDER TO PAY FINE

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(1) Offers or undertakes to diagnose, cure, advise or prescribe for any human disease, ailment, injury, infirmity, deformity, pain or other condition, physical or mental, real or imaginary, by any means or instrumentality;

RCW 18.71.011(1) (Emphasis added).

License required. No person may practice or represent himself or herself as practicing medicine without first having a valid license to do so.

RCW 18.71.021.

4.20 In this case, the Respondent does not have a license to practice as a physician in the state of Washington. The Presiding Officer concludes that the Program has proven by a preponderance of the evidence that the Respondent's conduct as described in Paragraphs 3.1 through 3.12 constituted the unlicensed practice of medicine in violation of RCW 18.71.021 as defined in RCW 18.71.011(1).

4.21 The statutes also define the practice of veterinary medicine and require those who practice veterinary medicine to have a license.

Veterinary practice defined. Any person shall be regarded as practicing veterinary medicine, surgery and dentistry within the meaning of this chapter who shall, within this state,

(1) by advertisement, or by any notice, sign, or other indication, or by a statement written, printed or oral, in public or private, made, done, or procured by himself or herself, or any other, at his or her request, for him or her, represent, claim, announce, make known or pretend his or her ability or willingness to diagnose or prognose or treat diseases, deformities, defects, wounds, or injuries of animals;

(2) or who shall so advertise, make known, represent or claim his or her ability and willingness to prescribe or administer any drug, medicine, treatment, method or practice, or to perform any operation, manipulation, or apply any apparatus or appliance for cure, amelioration, correction or reduction or modification of any animal disease, deformity, defect, wound or injury, for hire, fee, compensation, or reward, promised, offered, expected, received, or accepted directly or indirectly;

(3) or who shall within this state diagnose or prognose any animal diseases, deformities, defects, wounds or injuries, for hire, fee, reward, or

compensation promised, offered, expected, received, or accepted directly or indirectly;

(4) or who shall within this state prescribe or administer any drug, medicine, treatment, method or practice, or perform any operation, or manipulation, or apply any apparatus or appliance for the cure, amelioration, alleviation, correction, or modification of any animal disease, deformity, defect, wound, or injury, for hire, fee, compensation, or reward, promised, offered, expected, received or accepted directly or indirectly;

...

RCW 18.92.010

Applications — Procedure — Qualifications — Eligibility to take examination. No person, unless registered or licensed to practice veterinary medicine, surgery, and dentistry in this state at the time this chapter shall become operative, shall begin the practice of veterinary medicine, surgery and dentistry without first applying for and obtaining a license for such purpose from the secretary.

...

RCW 18.92.070

4.22 In this case, the Respondent does not have a license to practice veterinary medicine in the state of Washington. The Presiding Officer concludes that the Program has proven by a preponderance of the evidence that the Respondent's conduct as described in Paragraphs 3.1 through 3.10 and Paragraphs 3.13 through 3.16 constituted the unlicensed practice of veterinary medicine in violation of RCW 18.92.070 as defined in RCW 18.92.010.

4.23 The violations of unlicensed practice of medicine and of the unlicensed practice of veterinary medicine are grounds for issuance of a cease and desist order pursuant to RCW 18.130.190:

Practice without license — Investigation of complaints — Cease and desist orders — Injunctions — Penalties. . . .

(3) If the secretary makes a final determination that a person has engaged or is engaging in unlicensed practice, the secretary may issue a cease and desist order. In addition, the secretary may impose a civil fine in an amount not exceeding one thousand dollars for each day upon which the person engaged in unlicensed practice of a business or profession for which a license is required by one or more of the chapters specified in RCW 18.130.040. The proceeds of such fines shall be deposited to the health professions account.

RCW 18.130.190(3). In this case a cease and desist order should be issued.

4.24 Regarding the fine, the Presiding Officer considered the fact that she has been advertising her services through her website since 2003 when the Department received a complaint against her. The Respondent acquired the Orion device in 2002. The Respondent has a certificate indicating that she started EDT in 2001. She admits to having offered and provided services to humans and animals. Under the statute here, the Respondent would be required to pay a one thousand dollar fine for each day of unlicensed practice of medicine and veterinary medicine. The Presiding Officer considered the following aggravating factors. The Respondent undertook to treat ill people even though she has no health care degree or work experience. The Respondent treated people with very serious illnesses, which could result in further sickness or death. The Respondent, as shown with "JM's" case, advised a customer to follow her medication advice over the advice of a physician. The Respondent charged \$150.00 for her EDT testing. The Respondent aggressively marketed her business through her website. On the whole, the Respondent's violations were egregious, because her website made sweeping and unsupportable claims about her ability to treat humans and animals, and she specifically targeted people who were very ill. As a result of this egregious conduct, the Respondent should pay a fine in the amount of ten

thousand dollars. There should be a suspension of a part of the fine provided that she complies with this cease and desist order.

V. ORDERS

Based upon the above, the Presiding Officer hereby issues in this case the following ORDERS:

5.1 The Respondent's Motion for Summary Judgment is DENIED.

5.2. The Program's Motion for Summary Judgment is GRANTED; accordingly, the dates for the prehearing conference and the hearing are STRICKEN.

5.3 The Respondent shall immediately CEASE AND DESIST from and is PROHIBITED from doing the following within the state of Washington (including Indian reservation land):

5.3.1. Without obtaining a license to practice medicine under RCW 18.71:

a. From offering (through verbal or written statements, a website, flyer, or any other means of communication or advertisement) to use on a person (or on a person's saliva or blood sample) any instrumentality (including any type of galvanic skin response device, DCM or EDT device, including the Orion or Asyra) in order to diagnose, treat, assess, test for or identify any human disease, ailment, injury, deformity, pain, or other condition, physical or mental, real or imagined. This prohibition shall include, but not be limited to, using an instrumentality in order to identify pathogens, toxins, organ or emotional dysfunctions, "energy imbalances", or "electromagnetic signatures" within a human body. The prohibition applies whether or not the service is offered or performed in return for compensation.

b. From prescribing or administering any drugs or medicinal preparations, including, but not be limited to, homeopathic remedies or tinctures, for use on any other person. This prohibition applies whether or not the medications are offered or provided in return for compensation.

5.3.2 Without obtaining a license to practice veterinary medicine under RCW 18.92:

a. From offering (through verbal or written statements, a website, flyer, or any other means of communication or advertisement) to use on any animal (or on an animal's saliva or blood sample) any instrumentality (including any type of galvanic skin response device, DCM or EDT device, including the Orion or Asyra) in order to diagnose, treat, or test for or to identify any diseases, defects, wounds, ailments, deformities, pain, or injuries, of animals. This prohibition shall include, but not be limited to, using any instrumentality to identify pathogens, toxins, organ or emotional dysfunctions, "energy imbalances", or "electromagnetic signatures" within or on an animal's body. The prohibition applies whether or not the service is offered or performed in return for compensation.

b. From prescribing or administering any drug, medicine (including homeopathic remedies or tinctures), treatment, method, or practice, or performing or conducting any operation or manipulation, or applying any apparatus, appliance or instrumentality (including any type of galvanic skin response device, DCM or EDT device, including the Orion or Asyra), or diagnosing or prognosing, for the cure, alleviation, correction, or modification of any animal disease, deformity, defect, wound

Ethel #2

COA Div II

No 38844-8-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

GEOFFREY S. AMES, M.D.,)	No. 24897-6-III
)	
Petitioner,)	
)	
v.)	Division Three
)	
WASHINGTON STATE HEALTH)	
DEPARTMENT MEDICAL QUALITY)	
HEALTH ASSURANCE COMMISSION,)	
)	
Respondent.)	UNPUBLISHED OPINION

Kato, J.*—The Washington State Department of Health, Medical Quality Assurance Commission (Commission), found Dr. Geoffrey Ames had committed unprofessional conduct by using an alternative medical device. The Commission determined his conduct fell below the standard of care and suspended his license for five years. But it stayed the suspension provided that Dr. Ames comply with several conditions that included not using the device, paying a fine, and submitting his records for periodic evaluations. Dr. Ames appealed to superior

* Judge Kenneth H. Kato is serving as a judge pro tempore of the Court of Appeals pursuant to RCW 2.06.150.

court, which upheld the Commission's ruling. We affirm.

Dr. Ames, a licensed physician, is board certified in holistic medicine. In 1995, he began practicing in Richland, Washington, specializing in chronic fatigue and allergies. One of the methods used by Dr. Ames was acupuncture.

Another method used by Dr. Ames employed a device called the Life Information System Tens device (LISTEN). It is a galvanic skin response machine that measures changes in resistance. James Clark developed it and submitted information to the Food and Drug Administration (FDA). LISTEN was described as having electrodermal screening techniques, alternative medicine techniques, and bioenergetics techniques. The FDA did not clear the device for these uses. Mr. Clark also developed other galvanic skin response devices that were cleared, but not approved, by the FDA.

Dr. Ames learned about LISTEN from colleagues. He understood the device functioned like a biofeedback machine. In 1997, he purchased it and learned how to operate it from colleagues. His nurse attended a course on the use of the device for electrodermal screening (EDS), but he did not find her training useful for his purposes. He used LISTEN when treating his patients, but did not specifically bill them for it.

Dr. Ames saw Patient One on June 6, 2001, and July 10, 2001. The

patient complained of fatigue, sluggishness, weak and tired joints and muscles, infrequent joint and muscle pain, and severe mood swings. During the first visit, Dr. Ames discussed metal toxicity, metal poisoning, and his alternative medicine practice. He ordered blood tests and a urine test.

On July 10, Dr. Ames reviewed the lab results with Patient One and told him he had a mineral imbalance, mineral deficiencies, and a low testosterone level. Dr. Ames thought Patient One might have some metal poisoning that contributed to his tiredness. He told him he should undergo treatment for metal poisoning and he might be allergic to eggs and mustard, allergies that could be weakening his body.

Dr. Ames then told Patient One about LISTEN and how it could be used to find out what was going on with his body. Dr. Ames said he would place a probe connected to LISTEN in the patient's hand. This would enable the doctor to make a diagnosis and possibly cure any allergies.

Prior to using LISTEN, Dr. Ames assessed Patient One's strength. While lying on his back, the patient raised his right arm and Dr. Ames asked him to resist while he tried to pull his arm down. This test revealed Patient One had a strong resistance. Dr. Ames then had the patient raise his arm as before. The doctor typed the word "eggs" into LISTEN and asked the patient to resist when he

pulled on his arm. Dr. Ames was able to easily pull the patient's arm down, indicating he had been compromised due to his egg allergy. Next, the doctor had Patient One roll over onto his stomach and he thumped his back with an acupuncture device. Dr. Ames again did the resistance test with LISTEN, but this time he was not able to pull the patient's arm down. Dr. Ames told him his allergy was gone.

Dr. Ames advised Patient One not to eat any eggs for the next 24-48 hours or the treatment would not take. The patient believed any egg allergy he had was cured. He had never before been diagnosed as having an egg allergy. Dr. Ames told Patient One he would have to return to cure his other allergies because only one allergy at a time could be cured.

Dr. Ames disputed Patient One's account of the second visit, claiming he simulated the process he would use to treat the allergy through muscle testing but did not actually use LISTEN. He was merely informing Patient One about what might happen if he elected treatment.

Several weeks after his last visit, Patient One contacted the Department of Health (Department) because he was concerned about Dr. Ames's views of mercury, lead poisoning, and chelation. He also indicated concern with the doctor's obsession with alternative modalities.

After an investigation, the Department filed on July 10, 2002, a Statement of Charges against Dr. Ames, alleging he treated Patient One with LISTEN in violation of federal food and drug acts and state law. On February 5, 2003, the Department amended its charges against Dr. Ames to claim he was not acting within the required standard of care, his actions constituted moral turpitude, and he promoted an inefficacious device for personal gain. The Commission determined Dr. Ames violated (a) RCW 18.130.180(4) by being negligent in creating a risk the patient could be harmed and (b) RCW 18.130.180(16) by promoting an inefficacious device for personal gain. The Commission, however, did not find Dr. Ames had violated the standard of care or committed an act of moral turpitude. Based upon its findings, the Commission suspended his license. But the suspension was stayed provided Dr. Ames not use LISTEN in his practice, permit the Commission to conduct quarterly record reviews of his patients, submit a declaration he was complying with the order each quarter, and pay a \$5,000 fine. Dr. Ames appealed this decision to the Benton County Superior Court, which upheld the Commission's ruling. This appeal follows.

The Department charged Dr. Ames with violating several provisions of the Uniform Disciplinary Act, chapter 18.130 RCW. This Act establishes the licensure and disciplinary procedure for health care professions. *Nguyen v. Dep't*

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Ames v. Dep't of Health

of Health, Med. Quality Assur. Comm'n, 144 Wn.2d 516, 520, 29 P.3d 689 (2001), *cert. denied*, 535 U.S. 904 (2002). RCW 18.130.100 provides that all disciplinary proceedings are governed by the Washington Administrative Procedure Act (WAPA), chapter 34.05 RCW.

“In reviewing administrative action, this court sits in the same position as the superior court, applying the standards of the WAPA directly to the record before the agency.” *Heinmiller v. Dep't of Health*, 127 Wn.2d 595, 601, 903 P.2d 433, 909 P.2d 1294 (1995) (quoting *Tapper v. Employment Sec. Dep't*, 122 Wn.2d 397, 402, 858 P.2d 494 (1993)), *cert. denied*, 518 U.S. 1006 (1996). Because this is a medical quasi-criminal proceeding, findings of fact must be proved by a clear preponderance of the evidence. *Nguyen*, 144 Wn.2d at 529, 534. Unchallenged findings are verities on appeal. *Haley v. Med. Disciplinary Bd.*, 117 Wn.2d 720, 728, 818 P.2d 1062 (1991). Conclusions of law are reviewed under the “error of law” standard. *Id.* In applying this standard, courts accord substantial weight to the agency’s interpretation of the law, even though we may substitute our judgment for that of the agency. *Id.*

Dr. Ames claims the Commission erred by using its own expertise instead of taking expert testimony. But an administrative tribunal comprised of medical practitioners is competent to determine the propriety of medical conduct without

expert testimony. *In re Discipline of Brown*, 94 Wn. App. 7, 14, 972 P.2d 101 (1998), *review denied*, 138 Wn.2d 1010 (1999). Here, the Commission was comprised of two medical professionals and an attorney. It heard testimony from Dr. Ames as well as another doctor. The Commission was not required to take any additional expert testimony. *Id.*; *see also* RCW 34.05.461(5).

The Department alleged Dr. Ames violated RCW 18.130.180(4). RCW 18.130.180 defines what acts constitute unprofessional conduct for a health care provider. Specifically, RCW 18.130.180(4) states “[i]ncompetence, negligence, or malpractice which results in injury to a patient or which creates an unreasonable risk that a patient may be harmed” constitutes unprofessional conduct. The section further states “[t]he use of a nontraditional treatment by itself shall not constitute unprofessional conduct, provided that it does not result in injury to a patient or create an unreasonable risk that a patient may be harmed.” *Id.* The Commission concluded the Department proved by clear, cogent, and convincing evidence that Dr. Ames had violated this section by using LISTEN with Patient One. The doctor assigns error to this conclusion of law, as well as several of the Commission’s findings.

Dr. Ames assigns error to the first sentence of finding 1.7, which stated he did not know the physics behind the device or the voltage or amperage it used. In

response to questions regarding the electricity sent to the body by LISTEN, Dr. Ames testified, "I believe the LISTEN device sends a current of five ohms, but I'm not the inventor of the machine, so I can't really give you a reliable answer on that." Board Record (BR) at 2097-98. He later testified, "I don't know the physics behind it." BR at 2156. This finding is supported by clear and convincing evidence.

He also assigns error to the last two sentences of finding 1.12, which indicate he used the device in assessing patients. Dr. Ames testified he used the device to help him assess the allergies of his patients and he did use it. He testified he used LISTEN on about 50 percent of his patients. The device helped him to speed up his assessment of patients. The finding is supported by clear and convincing evidence.

Dr. Ames also assigns error to a sentence in finding 1.13 indicating Patient One described his symptoms on the date of his initial visit; a sentence in finding 1.15 that he told Patient One eggs and mustard could be weakening his body; and a sentence in finding 1.16 stating he told Patient One he could cure his egg allergy. These findings, however, are all supported by the testimony of Patient One.

Dr. Ames assigns error to findings 1.17-1.23 to the extent an allergy other

than hay fever was implied. These findings indicate Dr. Ames treated Patient One for an egg allergy. They are supported by the patient's testimony. The doctor also assigned error to the first sentence of finding 1.24, which states he told Patient One he could only treat one allergy at a time and the patient would have to come back for additional treatments to treat each allergy. Again, this finding is supported by the patient's testimony.

Dr. Ames further assigns error to findings 1.25-1.29, which state Dr. Ames used LISTEN to treat Patient One for his allergy to eggs, but the device could not provide such treatment. The findings question the diagnosis of egg allergy and indicate Dr. Ames used the device for his own personal gain and failed to ensure it was not harmful to his patients. The findings indicated Dr. Ames's use of the device precluded him from making a proper diagnosis and treatment, thus subjecting Patient One to an unreasonable risk of harm. Patient One's testimony supports these findings with regard to his visits and treatment with Dr. Ames, who admitted using LISTEN with his patients and that it improved his efficiency in treating patients. Other patients testified as to what Dr. Ames told them about LISTEN and how he used it in their treatments. Dr. Ames testified it was possible to cure an allergy in one visit. From this testimony, the challenged findings were supported by clear and convincing evidence.¹

Based on its findings, the Commission concluded Dr. Ames violated RCW 18.130.180(4). It believed the doctor violated this section because his actions created an unreasonable risk that Patient One could be harmed.

Dr. Ames contends the determination of negligence under this section was predicated on finding that LISTEN was an inefficacious device because it could not be used to make an appropriate diagnosis and/or provide effective treatment. The Commission, however, determined Dr. Ames used LISTEN to erroneously diagnosis and treat an egg allergy and consequently created an unreasonable risk Patient One would be harmed. Its conclusion was based on the following facts.

Dr. Ames testified about allergies and tests used to diagnose allergies. He testified kinesiology, the arm muscle testing process described by Patient One, can indicate an allergy. He also discussed blood tests and skin tests used by allergists. Dr. Ames did use a blood test, but did not do a skin test on Patient One. He used LISTEN to assist him in diagnosing allergies, but he did not have

¹ Whether LISTEN had FDA clearance or approval was argued by both parties. The Commission found the FDA had not cleared or approved the device. (findings 1.3-1.6, CP at 16-17). Dr. Ames did not challenge these findings and therefore they are verities. *Haley*, 117 Wn.2d at 728. Furthermore, these findings were supported by the testimony of the device's creator and the FDA. In any event, FDA clearance, or lack of it, was not of great import in the Commission's ruling.

any evidence LISTEN was efficacious for diagnosing allergies. He had only heard from colleagues that a device similar to it was efficacious. Dr. Ames admitted he did not understand the physics behind the device and was unsure what voltage it produced. He did not receive any claims, warnings or labeling with the device. He received no personal training on LISTEN. Patient One testified that in his second visit, Dr. Ames used LISTEN to diagnose and treat an allergy to eggs. Based on these facts, the Commission did not err by concluding Dr. Ames created an unreasonable risk of harm to Patient One by using LISTEN to diagnose and treat allergies without any evidence the device was effective for that purpose. Furthermore, he created an unreasonable risk of harm to Patient One by using LISTEN without understanding how it worked. Dr. Ames failed to establish he had any evidence from which he based his conclusion the device was appropriate to use in the diagnosis and treatment of allergies.

Dr. Ames claims this conclusion is flawed for two reasons. First, he asserts any error he made was a one-time error in judgment and did not constitute negligence. But the Commission was not asked to determine if the device was inefficacious for every possible use. The Statement of Charges indicated Dr. Ames's use of the device with Patient One constituted negligence. The charge and the underlying statute is specific to a patient. See RCW

18.130.180(4). The evidence clearly and cogently established Dr. Ames's use of the device with Patient One created an unreasonable risk of harm, thus establishing a violation of RCW 18.130.180(4). The Commission was not required to conclude the device was inefficacious in all circumstances.

Dr. Ames also claims the blood tests established Patient One had an egg allergy. Accordingly, the Commission erred by concluding Dr. Ames's treatment of Patient One for an egg allergy was based on LISTEN and by concluding Patient One did not have an egg allergy. There was evidence that Dr. Ames did a blood test on Patient One who testified Dr. Ames told him his blood test detected an allergy to eggs. But Dr. David Martin, Dr. Ames's own expert, testified that a blood test result alone was not a basis for treatment. Patient One testified he did not like eggs, but he had no symptoms indicating an allergy to eggs and had never been diagnosed with an egg allergy prior to Dr. Ames's diagnosis.

The Commission's ruling, however, was not based on Dr. Ames's diagnosis that Patient One had an egg allergy. It found Dr. Ames created an unreasonable risk of harm to Patient One by using LISTEN to treat his egg allergy. This risk was amplified because Dr. Ames did not understand the mechanics behind the device. A blood test suggested the possibility of an egg allergy, but it did not

change the fact that Dr. Ames treated this allergy with a device he did not understand and for which he had no training. This created an unreasonable risk of harm.

Dr. Ames further claims his supposed negligent use of LISTEN based on these facts was not charged and thus cannot support the Commission's conclusion. Specifically, he claims he was not prepared to defend against a claim that Patient One did not have an egg allergy. But the Statement of Charges clearly provides that his treatment of Patient One was at issue. It did not specifically charge him with misdiagnosing an egg allergy, but the Commission's decision was not based on a finding that Patient One had no egg allergy. The decision was based on the finding that Dr. Ames did not properly treat the allergy and used a device without proper investigation. The Statement of Charges put Dr. Ames on notice about his use of the device. The prehearing brief filed by the Department also put Dr. Ames on notice of its position. In these circumstances, Dr. Ames cannot claim he was unaware of the facts used by the Department to support its charges.

He claims the conclusion of negligence based on a failure to investigate was also unsupported and improper because it was not charged. The charges against Dr. Ames involved improper use of LISTEN. Contrary to his assertion,

the Department did argue that its case was based upon Dr. Ames's use of the device and that it was not proper in his medical practice. It was Dr. Ames's own testimony that provided support for the finding he did not understand the device, the physics behind it, or how it worked. His testimony also indicated he did not receive any training or literature on the device. The finding that Dr. Ames did not properly investigate LISTEN prior to using it on his own patients was supported by the record.

Dr. Ames argues that because he practices alternative medicine, the Commission impermissibly discriminated against him. He does not cite any supporting facts in the record. Moreover, nothing in the record suggests the Commission members were biased against Dr. Ames or alternative medicine.

A medical provider violates RCW 18.130.180(4) if he acts in a manner that creates an unreasonable risk of harm to a patient. Dr. Ames treated Patient One with LISTEN for an egg allergy. He knew very little about the device. The evidence was clear, cogent, and convincing that Dr. Ames's use of the device created an unreasonable risk of harm. The Commission did not err.

Dr. Ames also claims the Commission erred by determining LISTEN was inefficacious and he promoted it for his own personal gain. RCW 18.130.180 states that it is unprofessional conduct for any licensed health care provider to

promote for personal gain an unnecessary or inefficacious drug, device, treatment procedure, or service. The statute does not define “inefficacious.” Webster’s defines “inefficacious” as lacking the power to produce the desired effect. Webster’s Third New World Dictionary, 1156 (1993). There was no evidence the device was capable of curing allergies. The findings support the conclusion that the device was inefficacious for this situation.

Dr. Ames appears to argue that in order for a device to be inefficacious, it must create an unreasonable risk of harm. He urges RCW 18.130.180(4) to be read in conjunction with RCW 18.130.180(16). An appellate court reviews questions of statutory construction *de novo*. *Ballard Square Condo. Owners Ass’n v. Dynasty Constr. Co.*, 158 Wn.2d 603, 612, 146 P.3d 914 (2006).

The examination begins with the language of the statute and related statutes to determine whether plain statutory language shows the intended meaning of the statute in question. If this examination leads to a plain meaning, that is the end of the inquiry. If the statute is amenable to more than one reasonable interpretation, a court may then resort to legislative history, principles of statutory construction, and relevant case law to resolve the ambiguity and ascertain the meaning of the statute.

Id. (internal citations omitted).

RCW 18.130.180 begins by stating “[t]he following conduct, acts, or conditions, constitute unprofessional conduct for any license holder or applicant

under the jurisdiction or chapter.” The statute then lists 25 subsections that detail different conduct, acts, or conditions. Each numbered subsection is separate and distinct from the others and alone is unprofessional conduct. There is no basis for finding that portions or requirements of one subsection must be read into a different subsection. Thus, RCW 18.130.180(16) does not require that a device must demonstrate an unreasonable risk of harm in order to be inefficacious.

Dr. Ames further claims that even if the device was inefficacious, there was no evidence he used it to promote his own personal gain. The statute does not define “promote.” “Promote” is defined as “to contribute to the growth, enlargement or prosperity of.” Webster’s Third New International Dictionary, 1815 (1993). The evidence established Dr. Ames used the device with about 50 percent of his patients. He stated his use of the device helped him speed up his assessment of patients. Three patients testified Dr. Ames used the device on them. All reported he told them the cure for their allergies was provided, or at least substantially provided, by LISTEN. He also told them he could only cure one allergy at a time.

The Commission entered several findings detailing Dr. Ames’s use of LISTEN in his practice. Those findings were supported by clear and convincing evidence. The findings in turn support the conclusion that Dr. Ames used the

No. 24897-6-III
Ames v. Dep't of Health

device to promote his own personal gain. The evidence also showed clearly and convincingly that the device was inefficacious and could not produce the desired effect. The Commission did not err by finding Dr. Ames had violated RCW 18.130.180(16).

Dr. Ames argues the sanctions imposed were a manifest abuse of discretion because the evidence did not support a finding that he violated RCW 18.130.180(4) and .180(16). RCW 18.130.160 authorizes the imposition of sanctions based upon findings of unprofessional conduct. The Commission's findings of unprofessional conduct were proper. The sanctions imposed were permitted by RCW 18.130.160.

Affirmed.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

Kato, J. Pro Tem.

WE CONCUR:

Sweeney, C.J.

No. 24897-6-III
Ames v. Dep't of Health

Kulik, J.

Chairman Kreidler for free enterprise

Echikoff #3
COA Div II
No 38844-8-II

"Personally, I have no reservations about the hygienists or the physical therapists having their own independent practice," says Mike Kreidler, D-Olympia, chairman of the House Social and Health Services Committee.

"The reason you see government in these turf battles is that you don't see free enterprise working," he says of the battles over which health care specialists get state licenses to practice on their own.

"They can generate their own supply, and create their own demand," he says of such specialists as doctors, dentists, physical therapists, dental therapists.

"Professions are very good at telling you that you need to have their services," he says, explaining what he means by health care professions creating a demand for their services.

One thing he worries about in these battles about who gets health care licenses is economics. Increasing the number of independent professions may raise the over-all costs of health care, he says.

"Experience shows you get an initial decline in costs, followed by an over-all rise."

The initial decline might be because an independent dental hygienist charges less to clean teeth than a dentist would charge a patient who got his teeth cleaned by the dentist's hygienist.

But in the end, the price might go up because of greater use of the services, he says.

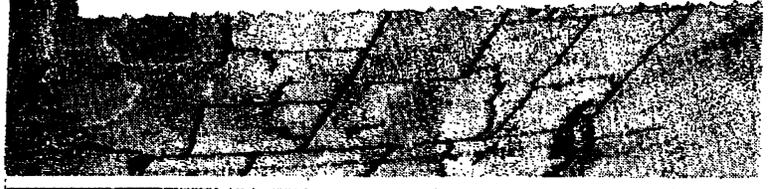
Because the Legislature is bound to go on getting involved in these professional turf wars, Kreidler has introduced a bill setting up ways to deal with them.

It is a complicated bill, but its heart is a statement that the state should keep its nose out of health care licensing as much as possible.

"... all individuals should be permitted to enter into a health occupation or profession unless there is an overwhelming need for the state to protect the interests of the public by restricting entry to the occupation," the bill says.

Regulate
Create Demand

Keep state's nose out



Births

The births are listed as they were given to The Olympian by St. Peter Hospital

- TUTTLE, Martha and James, 214 18th St. E., Olympia, a girl, Feb. 11.
- EDDY, Debbie and David, 818 Frederick St. S., Olympia, a girl, Feb. 14.
- WOOD, Paula and Michael, Feb. 15.
- BOLTON, Julianne and Gayla, a girl, Feb. 15.
- 4211 Shinnke Road N.E., Olympia, a girl, Feb. 15.
- for, Olympia, a boy, Feb. 15.
- CUTLER, Debbie and WARNER, Kelly, Shelton, a girl, Feb. 15.
- BOX, Kay and Ralph, 2206 Liliac St. S.E., Lacey, a boy, Feb. 15.

Clark Place, pleaded guilty to negligent driving reduced from diting while intoxicated, was Parsons, Lynn, ...

This is a protected form. Spell check is only available on the narrative sections.

- ◆ If you unprotect the form, Do **NOT** protect the form again after entering your information or it will disappear.
- ◆ Use the mouse to get to the next field.
- ◆ Use a separate row for every percentage of time used performing specific duties.

COA DWI No 38844-8-II

CLASSIFICATION QUESTIONNAIRE S.F. 570 (Rev. 11/02)			1. AGENCY NAME Department of Health	2. POSITION NO. 0143
3. EMPLOYEE'S NAME (Last, First, Initial) DeBusschere, Arthur E.		PHONE NO. 236-4677	4. SUBMITTED BY <input checked="" type="checkbox"/> AGENCY <input type="checkbox"/> EMPLOYEE	5. POSITION ACTION NO.
6. DIVISION/INSTITUTION/SECTION/UNIT Adjudicative Services		MAIL STOP 7879	7. SUBMITTED FOR <input checked="" type="checkbox"/> UPDATE <input type="checkbox"/> REALLOCATION <input type="checkbox"/> ESTABLISHMENT <input type="checkbox"/> OTHER	
8. IMMEDIATE SUPERVISOR'S NAME Laura Farris		PHONE NO. 236-4889	IMMEDIATE SUPERVISOR'S CLASS TITLE Senior Health Law Judge	
9. PRESENT CLASS TITLE Hearings Examiner 3		CLASS CODE 47240	PROPOSED CLASS TITLE	
10. WORKING TITLE (If different than class title) Health Law Judge		14. CLASS TITLE		CLASS CODE
11. EMPLOYMENT, with Dept. YEARS MONTHS		WITH PRESENT DUTIES YEARS MONTHS	12. HRS OF WORK 40+ hrs/wk	15. EFFECTIVE DATE
10		6+		16. WORK WEEK DESIGNATION
13. LOCATION OF EMPLOYMENT 310 Israel Road SE, Tumwater Washington		18. AUDITED BY		19. DATE
22. % OF TIME <input checked="" type="checkbox"/> DAY <input type="checkbox"/> WK <input checked="" type="checkbox"/> MO. <input type="checkbox"/> YR		23. EMPLOYEE'S STATEMENT OF DUTIES LIST THOSE DUTIES WHICH OCCUPY MOST OF YOUR TIME. UNDERLINE YOUR MOST RESPONSIBLE DUTY.		

80% Conducts adjudicative proceedings and issues final decisions for cases within the jurisdiction of the Secretary of the Department of Health and issues proposed final decisions or serves as presiding officer for cases within the jurisdiction of boards and commissions. Travels within the state to hear cases. The cases are usually more than two days in length, exclusive of preparation time or decision making time. Both sides of a case call expert witnesses, and the dollar value of issues exceeds \$100,000. Adjudicative proceedings include the following elements:

- Determine whether an administrative hearing is to be granted for cases under the jurisdiction of the Secretary of the Department of Health and that of the boards or commissions, reviewing the record and researching the law if necessary.
- Preside over hearings within the framework of the Administrative Procedures Act, the Uniform Disciplinary Act and the Washington Administrative Code for programs within the Department of Health.
- Conduct conferences to address motions or other issues raised by the parties.
- Conduct prehearing conferences and issues prehearing orders governing the progress of the case, hearing oral argument of counsel if necessary or requested. Rules on all legal, procedural and evidentiary issues and motions filed by the parties. If necessary provides instructions to witnesses. Writes prehearing orders, including orders addressing motions for summary judgment and motions to dismiss.
- Analyze testimony of lay and expert witnesses; analyzes and evaluates exhibits offered during hearings; weighs the evidence presented by all parties; and applies the law to the evidence.
- Prepare concise and accurate final orders in contested cases. These orders include procedural and factual findings, conclusions of law, and a final disposition of the case, including statutory and case law citations where appropriate.

15% Review petitions for reconsideration, grants reconsideration if appropriate, reviewing the record and researching applicable law, conducts proceedings on reconsideration if necessary and drafts final order.

5% Perform other work as required.

Proficient in Achievement Orientation, Analysis and Problem Solving, Communication, Cultural Competency, Customer Service Orientation, Interpersonal Skills, and Professional and Technical Competence; and **Knowledgeable** in Leadership, Organizational Influence; and Strategic, Financial and Project Planning.

DEPARTMENT OF HEALTH
 Group of Human Resources
 SEP 12 2005
 Update best case + salary proposal

ESSENTIAL FUNCTIONS: Health Law Judge (Hearings Examiner 3)

Tasks and Responsibilities:

Manage complex discipline cases through hearing
Draft legal documents, including but not limited to Findings of Fact, Conclusions of Law and Final Order, Prehearing Orders, Continuances, Orders on Motion, to professional standards required by Adjudicative Services
Maintain legal files, both electronic and paper, in orderly fashion
Communicate effectively with a variety of people in a variety of settings
Work well with non-lawyers and effectively express legal concepts in plain English
Access and manage data in agency systems
Research laws and facts, review records and exhibits in both paper and electronic format
Identify and analyze legal issues
Convene proceedings, including in-person events and telephonic conferences.

Administrative Demands:

Maintain membership in the Washington State Bar Association
Travel
* Accept departmental limitations on independence of judgment
Maintain adequate continuing level of currency in required subject areas

Tools and Equipment:

Operate office equipment such as computer, calculator, copy machine, FAX machine, hole punch and multiple-line telephone.

Physical Requirements:

Carry files
Review documents maintained in files
Lift boxes to a maximum of 35 lbs.
Sit for long periods of time at a computer

Mental Requirements:

Comprehend and recall oral and written instructions and other materials

Edit accurately

Follow directions

Cope with stressful situations

Function independently

Communicate effectively orally and in writing

* Follow directions and accept supervisory authority

Interact with public and co-workers in courteous, professional and respectful manner

Manage and prioritize workload

Health and Safety Requirements:

Ability to work indoors and confined to a desk for a majority of the work day.

Respect and abide by applicable workplace safety requirements

Productivity Requirements:

Compose clear, effective documents

Possess and apply organizational skills, including ability to organize workflow in order to stay within agency guidelines and statutory limits

Produce documents and maintain files in a timely fashion

-Original Copy
Department of Personnel

-Copy Agency Head-
Quarters Personnel Office

-Copy for Employee
Office of Originator

-Copy for Employee

-Copy for Direct Mail to the
Department of Personnel

EMPLOYEE'S STATEMENT (Cont'd.)

24. EMPLOYEE'S WITHIN THE AGENCY WHOSE DUTIES ARE THE SAME (Name) A. John Kuntz B. C. Harriet Zimmerman Caner	CLASSIFICATION TITLE Hearing Examiner 3 Hearing Examiner 3	WORKING TITLE Health Law Judge Health Law Judge
--	--	---

25. UNITS SUPERVISED (if applicable), NO. OF EMPLOYEES IN EACH, ALSO ATTACH 8-1/2" X 11" ORGANIZATION CHART

26. SUBORDINATE EMPLOYEES REPORTING DIRECTLY TO THIS POSITION-HIGHEST PAY RANGE FIRST.

NAME OR NUMBER	CLASSIFICATION TITLE	WORKING TITLE
A.		
B.		
C.		
D.		

E. (Number) ADDITIONAL EMPLOYEES REPORTING DIRECTLY TO THIS POSITION

27. OFFICE MACHINES, EQUIPMENT, TOOLS, MOTOR VEHICLES, ETC. OPERATED ON JOB, PERCENT OF TIME
 Computer word-processing 90%; Auto 5% Telephone 4.5%; Typewriter .5%

28. ADDITIONAL COMPENSATION (ROOM, BOARD, LAUNDRY, CLOTHES, ETC.) RECEIVED IN ADDITION TO CASH SALARY

I CERTIFY THAT THE STATEMENTS CONTAINED HEREIN ARE MY OWN AND ARE ACCURATE AND COMPLETE.	29. SIGNATURE OF EMPLOYEE 	30. DATE 9-7-05
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IMMEDIATE SUPERVISOR'S STATEMENT

31. AGREE DISAGREE WITH EMPLOYEE'S STATEMENTS. EXPLAIN (Attach Additional Sheets, if Needed)

32. AGREE DISAGREE WITH EMPLOYEE'S STATEMENT AS TO MOST RESPONSIBLE DUTY (ITEM 23). EXPLAIN.

33. SUPERVISION REQUIRED BY POSITION
 CLOSE, DETAILED SPOT check BASIS ONLY LITTLE-EMPLOYEE RESPONSIBLE FOR DEvisING OWN WORK METHODS OTHER EXPLAIN ITEM CHECKED

34. EDUCATION REQUIRED POSITION (KIND AND LENGTH OF TIME)
 LESS THAN HIGH SCHOOL HIGH SCHOOL GRADUATION SOME COLLEGE, NO. OF YEARS REQ'D COLLEGE GRADUATION GRADUATES STUDY DEGREE MAJOR
LAW DEGREE

35. EXPERIENCE REQUIRED BY POSITION (KIND AND LENGTH OF TIME)
 Current job specifications plus one year of trial practice in public or private employment.

36. SPECIAL KNOWLEDGE, SKILLS, LANGUAGE, LICENSE, CERTIFICATE, ETC. REQUIRED BY POSITION
 Admission to practice law in the state of Washington.

37. SIGNATURE OF IMMEDIATE SUPERVISOR 	38. TITLE Senior Health Law Judge	39. DATE 9/7/05
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DEPARTMENT HEAD'S STATEMENT

40. COMMENTS AS TO ACCURACY AND COMPLETENESS OF STATEMENTS BY EMPLOYEE AND IMMEDIATE SUPERVISOR. (Attach Additional Sheets if Necessary)

41. AGREE DISAGREE WITH STATEMENTS IN ITEMS 34, 35, AND 36. COMMENT

42. SIGNATURE OF DEPARTMENT HEAD OR DESIGNEE 	43. TITLE	44. DATE 9-9-05
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Exhibit #5
COA Div II
No 38844-8-IT

The Olympian

www.theolympian.com

Health laws topic of forums

By Keri Brenner | The Olympian • Published June 23, 2008

Concerned about the state Department of Health's oversight of licensed acupuncturists, the Washington Acupuncture and Oriental Medical Association has set a series of meetings for its members throughout the state starting June 30.

According to association President George Whiteside, the trigger is the health department's "taking a hard line" in narrowly interpreting the boundaries of what services acupuncturists are permitted to offer.

Whiteside, a Seattle-area licensed acupuncturist, said the state is opposing acupuncturists giving "lifestyle advice," such as on meditation or stress reduction, even though acupuncture students are trained to make such recommendations.

"The law says acupuncture is based on a system of Oriental medicine, but they're saying that doesn't include Oriental medicine," Whiteside said. "Right now, our licensing requires a much broader level of training than the statute reflects."

Whiteside said the state's 1,200 licensed acupuncturists have no state peer-review board as do other medical groups. That leaves them vulnerable in such discipline and standards disputes, he said.

Health department officials say such issues are fairly and impartially overseen by a group of health law judges, who are department employees trained to assess legal issues in health care matters.

"The secretary of Health is the final decision-maker," said Joyce Roper, senior assistant state attorney general and counsel to the state Health Department. "She has delegated this authority to the health law judges, who are segregated from the licensing department."

Maple Valley attorney Michael McCormack, who is representing Tumwater acupuncturist Fred Klemmer and two other holistic practitioners in legal cases involving Health, said the system of using administrative law judges was flawed.

"The Department of Health uses their own employees as judges instead of sending them to the Office of Administrative Hearings, where an independent judge can hear the case," he said.

Roper, however, said Health switched from the administrative hearings office some years back after dissatisfaction with scheduling problems and concerns over the hearing examiners' lack of health care knowledge.

"The Office of Administrative Hearings handles food stamp hearings and cases for (the Department of Social and Health Services) and other departments," Roper said.

Klemmer could not be reached for comment.

McCormack said the charges against him, if upheld, could lead to a five-year suspension of both his acupuncture license and his counseling credentials. According to McCormack, the charges stem from a complaint filed by an ex-patient, who alleges Klemmer offered meditation advice without a prior signed consent formed specifically for that topic, and that the advice was outside the scope of acupuncture practice as defined by Washington state law.

"This is the first case of its type," McCormack said.

The professional meetings will be June 30 in Seattle, July 16 in Bellingham and July 25 in Vancouver, Wash.

Keri Brenner covers health and Thurston County for The Olympian. She is a licensed acupuncturist in Washington and Oregon. She can be reached at 360-754-5435 or kbrenner@theolympian.com.

DEPARTMENT OF PERSONNEL MERIT SYSTEM EMPLOYEE HISTORY

RUN

45095

*Confidential
COA DIVISION NO. 38844-8-74*

NO.	ACTION	NAME	AGY	SUB	ORG. CODE	CLASS	TITLE	HINDI	SEX	RANGE
DATE	DATE	C/A	STAT	ANU	DATE	PERM	SEN	DATE		
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		DEBUSSCHERE, ARTHUR								
1/00	386	DATA CHG	100		23	A	04/07/10		M	W
1/00/00	01/00/00									
1/00	386	DATA CHG	100		23	A	07/16/09		M	W
1/00/00	01/00/00									
1/00	386	DATA CHG	100		23	A	01/27/09		M	W
1/00/00	01/00/00									
1/00	386	DATA CHG	100		23	A	05/06/08		M	W
1/00/00	01/00/00									
1/00	386	DATA CHG	100		23	A	05/06/08		M	W
1/00/00	01/00/00									
1/75	210	ORIGINAL	300							
12/02/75	06/02/75									
1/75	362	BAL INCRE	300			2	32	3545	INST	COUNSELOR 2
12/02/76	06/02/75									
1/76	342	LEV W/O PY	300			1	32	3545	INST	COUNSELOR 2
12/02/76	12/02/75									
1/76	342	LEV W/O PY	300			1	32	3545	INST	COUNSELOR 2
12/02/76	12/02/75									
1/78	346	RET FR LEV	300			Y	32	3545	INST	COUNSELOR 2
12/02/76	12/02/75									
1/78	390	CDR OF ERR	300			Y	32	3545	INST	COUNSELOR 2
12/01/78	12/02/75									
1/78	302	PRDM W/IN	300			Y	32	3552	PSYCH	SOC WKR 2
12/01/78	06/15/78									
1/78	362	BAL INCRE	300			Y	32	3552	PSYCH	SOC WKR 2
12/01/79	06/15/78									
5/78	374	STATUS CHG	300			Y	32	3552	PSYCH	SOC WKR 2
12/01/79	06/15/78									
1/79	362	BAL INCRE	300			Y	32	3552	PSYCH	SOC WKR 2
12/01/80	06/15/78									

*Not responsive
request to
This area*

15095

DEPARTMENT OF PERSONNEL MERIT SYSTEM EMPLOYEE HISTORY

RUN

ID	NAME	AGY	SUB	ORG	CODE	CLASS	TITLE	ETH	
REGISTRATION	C/A DATE	STAT	ANNU DATE	PERM	SEN DATE	MENT	HNDI	SEX	
(MM/DD/YY)	(MM/DD/YY)	(MM/DD/YY)	(MM/DD/YY)	(MM/DD/YY)	(MM/DD/YY)	(MM/DD/YY)	(MM/DD/YY)	(MM/DD/YY)	
80	920 CONVERSION	1	300	C42	H32	32	3552	PSYCH SOC WKR 2	38
/01/80	06/15/78				06/02/75	Y	06/18/75		W
80	385 SAL ADJUST	1	300	C42	H32	32	3552	PSYCH SOC WKR 2	38
/01/80	06/15/78				06/02/75	Y	06/18/75		W
80	362 SAL INCRE	1	300	C42	H32	32	3552	PSYCH SOC WKR 2	38
/01/81	06/15/78				06/02/75	Y	06/18/75		W
81	362 SAL INCRE	1	300	C42	H32	32	3552	PSYCH SOC WKR 2	40
/01/82	06/15/78				06/02/75	Y	06/18/75		W
82	366 REALLDC	1	300	C42	H32	32	3554	PSYCH SOC WKR 3	44
/01/82	03/04/82				06/02/75	Y	06/18/75		W
82	362 SAL INCRE	1	300	C42	H32	32	3554	PSYCH SOC WKR 3	44
/01/83	03/04/82				06/02/75	Y	06/18/75		W
83	386 DATA CHG	1	300	C42	H32	32	3554	PSYCH SOC WKR 3	44
/01/83	03/04/82				06/02/75	Y	06/23/75		W
83	343 LMOP-EDUC	1	300	C42	H32	32	3554	PSYCH SOC WKR 3	44
/01/83	03/04/82				06/02/75	Y	06/23/75		W
83	346 RET FR LEV	1	300	C42	H32	32	3554	PSYCH SOC WKR 3	44
/01/83	03/04/82				06/02/75	Y	06/23/75		W
83	386 DATA CHG	1	300	C42	H32	32	3554	PSYCH SOC WKR 3	44
/01/83	03/04/82				06/02/75	Y	07/14/75		W
83	386 DATA CHG	1	300	C42	H32	32	3554	PSYCH SOC WKR 3	44
/01/83	03/04/82				06/02/75	Y	07/24/75		W
83	340 TEMP W/IN	7	300	C42	H32	32	3556	PSYCH SOC WKR 4	48
/01/83	11/10/83				06/02/75	Y	07/24/75		W
83	362 SAL INCRE	7	300	C42	H32	32	3556	PSYCH SOC WKR 4	48
/01/84	11/10/83				06/02/75	Y	07/24/75		W
83	341 RET FR TEM	1	300	C42	H32	32	3554	PSYCH SOC WKR 3	44
/01/84	12/23/83				06/02/75	Y	07/24/75		W

DEBUSSCHERE, ARTHUR

This order is not responsible

MS0975

DEPARTMENT OF PERSONNEL MERIT SYSTEM EMPLOYEE HISTORY

*Exhibit # 201e
CPA DVID
NO. 38844-8-27*

NO.	ACTION	C/A DATE	C/A DATE	AGY STAT	SUB	ORG. CODE	ENTY.	CLASS	TITLE	HNDI	SEX	RANGE
DB/YY	(MM/DD/YY)	(MM/DD/YY)	(MM/DD/YY)		(MM/DD/YY)		(MM/DD/YY)					ETH
	DEBUSSCHERE, ARTHUR											
/84	390	01/01/84	03	6	06/02/75		32	EX076	ASST ATTY GEN		M	99
2/31/99												
/84	224	01/02/84	03	6	06/02/75		32	EX076	ASST ATTY GEN		M	99
2/31/99												
/84	700	12/23/83	H32	1	06/02/75		32	3554	PSYCH SDC WKR	3	M	44
2/01/84												
/84	385	01/01/84	03	6	06/02/75		32	EX076	ASST ATTY GEN		M	99
2/31/99												
/85	385	01/01/84	03	6	06/02/75		32	EX076	ASST ATTY GEN		M	99
2/31/99												
/86	378	01/01/84	03	6	06/02/75		32	EX076	ASST ATTY GEN		M	99
2/31/99												
/87	378	01/01/84	23	6	06/02/75		34	EX076	ASST ATTY GEN		M	99
2/31/99												
/87	384	01/01/84	23	6	06/02/75		34	EX076	ASST ATTY GEN		M	99
2/31/99												
/87	384	01/01/84	23	6	06/02/75		34	EX076	ASST ATTY GEN		M	99
2/31/99												
/88	386	01/01/84	23	6	06/02/75		34	EX076	ASST ATTY GEN		M	99
2/31/99												
/88	386	01/01/84	23	6	06/02/75		34	EX076	ASST ATTY GEN		M	99
2/31/99												
/89	386	01/01/84	23	6	06/02/75		34	EX076	ASST ATTY GEN		M	99
2/31/99												
/89	384	01/01/84	23	6	06/02/75		34	EX076	ASST ATTY GEN		M	99
2/31/99												

*This area -
Not responsive
request*

DEPARTMENT OF PERSONNEL MERIT SYSTEM EMPLOYEE HISTORY

NO.	NAME	AGY. SUB	ORG. CODE	ENTY CLASS.	TITLE	HNDI	SEX	RANGE
DATE	ACTION	C/A DATE	C/A STAT	ANY DATE	PERM	SEM DATE	MGMT	ETH
(DD/YY)	(MM/DD/YY)	(MM/DD/YY)	(MM/DD/YY)	(MM/DD/YY)	(MM/DD/YY)	(MM/DD/YY)	(MM/DD/YY)	
	DEBUSSCHERE, ARTHUR							
1/89	384 SALARY ADJ	01/01/84	6	23	Y	34	EX076 ASST ATTY GEN	99
12/31/99				06/02/75		34	07/24/75	W
1/90	384 SALARY ADJ	01/01/84	6	23	Y	34	EX076 ASST ATTY GEN	99
12/31/99				06/02/75		34	10/09/75	W
1/90	384 SALARY ADJ	01/01/84	6	23	Y	34	EX076 ASST ATTY GEN	99
12/31/99				06/02/75		34	10/09/75	W
1/91	384 SALARY ADJ	01/01/84	6	23	Y	34	EX076 ASST ATTY GEN	99
12/31/99				06/02/75		34	10/09/75	W
2/92	384 SALARY ADJ	01/01/84	6	23	Y	34	EX076 ASST ATTY GEN	99
12/31/99				06/02/75		34	10/09/75	W
3/92	384 SALARY ADJ	01/01/84	6	23	Y	34	EX076 ASST ATTY GEN	99
12/31/99				06/02/75		34	10/09/75	W
1/92	384 SALARY ADJ	01/01/84	6	23	Y	34	EX076 ASST ATTY GEN	99
12/31/99				06/02/75		34	10/09/75	W
1/93	384 SALARY ADJ	01/01/84	6	23	Y	34	EX076 ASST ATTY GEN	99
12/31/99				06/02/75		34	10/09/75	W
0/94	455 TRANS OUT	01/01/84	6	23	Y	34	EX076 ASST ATTY GEN	99
12/31/99				06/02/75		34	10/09/75	W
1/94	291 RET FR EXM	05/01/94	2	2125	Y	34	47220 HEARINGS EXAM 2	58
05/01/95				06/02/75		34	10/09/75	W
1/94	374 STATUS CHG	05/01/94	1	2125	Y	34	47220 HEARINGS EXAM 2	58
05/01/95				06/02/75		34	10/09/75	W
1/95	362 SAL INCRE	05/01/94	1	2125	Y	34	47220 HEARINGS EXAM 2	58
05/01/96				06/02/75		34	10/09/75	W
1/95	385 SAL ADJUST	05/01/94	1	2125	Y	34	47220 HEARINGS EXAM 2	58
05/01/96				06/02/75		34	10/09/75	W
1/96	362 SAL INCRE	05/01/94	1	2125	Y	34	47220 HEARINGS EXAM 2	58
05/01/96				06/02/75		34	10/09/75	W
1/97	385 SAL ADJUST	05/01/94	1	2125	Y	34	47220 HEARINGS EXAM 2	58
05/01/96				06/02/75		34	10/09/75	W

*This area -
Not responsiv
to
Request*

MS095

DEPARTMENT OF PERSONNEL MERIT SYSTEM EMPLOYEE HISTORY

RUN

NO.	NAME	AGY	SUB	ORG.	CODE	ENTY	CLASS	TITLE	HNDI	SEX	RANGE
DATE	C/A DATE	STAT	ANY DATE	DATE	PERM	SEM DATE	MENT				ETH
(MM/DD/YY)	(MM/DD/YY)		(MM/DD/YY)	(MM/DD/YY)		(MM/DD/YY)					1
	DEBUSSCHERE, ARTHUR										
/99	366	REALLOC	1	303	2125	34	47240	HEARINGS EXAM 3		M	62
2/01/00	02/03/99				06/02/75	10/09/75	9				W
/99	385	SAL ADJUST	1	303	2125	34	47240	HEARINGS EXAM 3		M	62
2/01/00	02/03/99				06/02/75	10/09/75	9				W
/00	362	SAL INCRE	1	303	2125	34	47240	HEARINGS EXAM 3		M	62
2/01/00	02/03/99				06/02/75	10/09/75	9				W
/01	385	SAL ADJUST	1	303	2125	34	47240	HEARINGS EXAM 3		M	62
2/01/00	02/03/99				06/02/75	10/09/75	9				W
/05	386	DATA CHG	1	303	2125	34	47240	HEARINGS EXAM 3		M	62
2/01/00	02/03/99				06/02/75	06/02/75	9				W
/05	385	SAL ADJUST	1	303	2125	34	47240	HEARINGS EXAM 3		M	63
2/01/00	02/03/99				06/02/75	06/02/75	9				W
/05	393	ACT APP WI	1	303	2125	34	47240	HEARINGS EXAM 3		M	63
2/01/00	12/01/05				06/02/75	06/02/75	9				W
/06	394	RET ACT AP	1	303	2125	34	47240	HEARINGS EXAM 3		M	63
2/01/00	01/01/06				06/02/75	06/02/75	9				W
/06	386	DATA CHG	1	303	9010	34	47240	HEARINGS EXAM 3		M	63
2/01/00	01/01/06				06/02/75	06/02/75	9				W

This area -
Not resp
ref



24-Kubel II
COA D10 15 No 38844-8-II

Rob McKenna

ATTORNEY GENERAL OF WASHINGTON

7141 Cleanwater Dr SW • PO Box 40109 • Olympia WA 98504-0109

July 18, 2008

Thurston County Superior Court Clerk's Office
2000 Lakeridge Drive SW Building 2
PO Box 40947
Olympia, WA 98504-0947

RE: *Joyce Tasker v. Washington State Department of Health,*
Thurston County Superior Court No. 08-2-01337-2

Dear Clerk:

Enclosed please find the original order signed by Judge Tabor for filing in the above referenced case.

I have also enclosed two copies, with postage-prepaid envelopes attached for conforming and return to our office and to opposing counsel's office.

Thank you for your attention in this matter.

Sincerely,

Jacqueline K. Conway
360-586-6473
Legal Assistant to
Richard A. McCartan,
Assistant Attorney General
Attorney for Department of Health

jkc
Enclosures

1 EXPEDITE

2 No Hearing Set

3 Status Conference is Set:

4 Date: 9/5/2008

5 Time: 9:00 AM

6 The Honorable Judge Gary R. Tabor

7
8
9
10 **STATE OF WASHINGTON**
11 **THURSTON COUNTY SUPERIOR COURT**

12 JOYCE TASKER,

13 Plaintiff,

14 v.

15 WASHINGTON STATE
16 DEPARTMENT OF HEALTH,

17 Defendant.

NO. 08-2-01337-2

ORDER DISMISSING
DECLARATORY
JUDGMENT ACTION

18 THIS MATTER came before the court on July 18, 2008 on the Department
19 of Health's Motion to Dismiss. The parties present were Richard A. McCartan,
20 Assistant Attorney General, representing the Department, and Michael K.
21 McCormack representing Plaintiff Joyce Tasker. Having reviewed the pleadings
22

ORDER DISMISSING
DECLARATORY
JUDGMENT ACTION

1

ATTORNEY GENERAL OF WASHINGTON
Agriculture & Health Division
7141 Cleanwater Drive SW
PO Box 40109
Olympia, WA 98504-0109
(360) 586-6500

COPY

1 and considered the memoranda and arguments of counsel, the court finds and
2 concludes:

- 3 1. The court lacks jurisdiction
4 under RCW 7.24 and res judicata.
5 _____
6 2. In any event, the Health Law Judge
7 had authority to rule.
8 _____
9 3. The action is dismissed.
10 _____
11 _____
12 _____

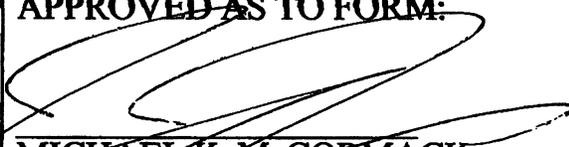
13 DATED this 18 day of July, 2008.

14 
15 The Honorable Judge GARY R. TABOR

16 PRESENTED BY:

17 
18 RICHARD A. McCARTAN
19 WSBA #8323

20 APPROVED AS TO FORM:

21 
22 MICHAEL K. McCORMACK
WSBA #15006

ORDER DISMISSING
DECLARATORY
JUDGMENT ACTION

Etiket # 8
COA Div # NO. 38844-11

Chairman Kreidler for free enterprise

"Personally, I have no reservations about the hygienists or the physical therapists having their own independent practice," says Mike Kreidler, D-Olympia, chairman of the House Social and Health Services Committee.

"The reason you see government in these turf battles is that you don't see free enterprise working," he says of the battles over which health care specialists get state licenses to practice on their own.

"They can generate their own supply, and create their own demand," he says of such specialists as doctors, dentists, physical therapists, dental therapists.

"Professions are very good at telling you that you need to have their services," he says, explaining what he means by health care professions creating a demand for their services.

One thing he worries about in these battles about who gets health care licenses is economics. Increasing the number of independent professions may raise the over-all costs of health care, he says.

"Experience shows you get an initial decline in costs, followed by an over-all rise."

The initial decline might be because an independent dental hygienist charges less to clean teeth than a dentist would charge a patient who got his teeth cleaned by the dentist's hygienist.

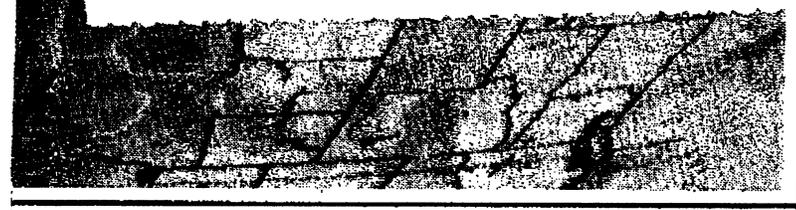
But in the end, the price might go up because of greater use of the services, he says.

Because the Legislature is bound to go on getting involved in these professional turf wars, Kreidler has introduced a bill setting up ways to deal with them.

It is a complicated bill, but its heart is a statement that the state should keep its nose out of health care licensing as much as possible.

"... all individuals should be permitted to enter into a health occupation or profession unless there is an overwhelming need for the state to protect the interests of the public by restricting entry to the occupation," the bill says.

79
C
K
S
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P



Births

The births are listed as they were given to The Olympian by St. Peter Hospital
TUTTLE, Martha and James, 214 18th St. E., Olym-
pia, a girl, Feb. 11.
EDDY, Debbie and David, 818 Frederick St. S., Olympia, a girl, Feb. 14.
WOOD, Paula and Michael, Feb. 15.

4211 Shuncke Road N.E., Olym-
pia, a girl, Feb. 15.
BOLTON, Julianne and Gay-
lor, Olympia, a boy, Feb. 15.
CULTEE, Debbie and WARNER, Kelly, Shelton, a girl, Feb. 15.
BOX, Kay and Ralph, 2206 Lilac St. S.E., Lacey, a boy, Feb. 15.

Appendix 8 RCW 18.120. Hx.jpg (Resized to 52%, Show actual size)

SHB 359

BY Committee on Social & Health Services (originally sponsored by Representatives Kreidler, B. Williams, Sommers, Lewis Dellwo and Niemi)

Establishing guidelines for the regulation of health professions and occupations not now regulated.

HOUSE COMMITTEE on Social and Health Services

SENATE COMMITTEE on Social and Health Services

Senate Hearing Date(s): April 7, 1983

Senate Staff: Jane Habegger (753-7708)

SYNOPSIS AS OF APRIL 7, 1983

BACKGROUND:

Currently, there is quite a proliferation of professional occupations in the health area which have obtained licensure in at least 21 in the state of Washington. Every year the legislature encounters new groups seeking regulation, and legislative committees are finding it increasingly difficult to judge the appropriateness of creating new professions, ostensibly in the name of protecting the public safety, without further fracturing the health care delivery system. In addition, the granting of the privilege of licensure or regulation entails certain consequences which may work against the public interest, such as restricting entry into the profession, and higher professional fees. There is a need for establishing guidelines for the legislature in assessing the need for regulatory schemes for new occupations, as well as existing ones which seek substantial expansion of their scopes of practice.

SUMMARY:

Legislative intent declares that health licensure be imposed for the exclusive purpose of protecting the public interest. The intent is specified for determining the need for regulation in the following circumstances: (1) demonstrated harm to the public safety; (2) a public harm derived from the establishment of professional competence requirements; and (3) public protection in the most cost-effective and least restrictive manner.

Appendix 8 RCW 18.120. Hx 001.jpg (Resized to 45%, Show actual size)

public safety, alternatives to regulation, benefits and harm to the public of regulation, maintenance of standards and impact costs.

A dedicated health professions fund is created composed of license fees of health professions regulated. The costs of regulation are to be borne exclusively from licensure fees and licensed health professions shall be self-sustaining.

The director of licensing is made up of ex-officio members of health regulatory board for those licensed professions under jurisdiction.

Fiscal Note: available

Appendix 8 RCW 18.120. Hx 002.jpg (Resized to 45%, Show actual size)

SENATE BILL REPORT

SHB 359

BY Committee on Social and Health Services (Originally sponsored by Representatives Kreidler, B. Williams, Sommers, Lewis, Walk, Dellwo and Niemi)

Establishing guidelines for the regulation of health professions and occupations not now regulated.

HOUSE COMMITTEE on Social and Health Services

SENATE COMMITTEE on Social and Health Services

Senate Hearing Date(s): April 7, 1983

Senate Majority Report: Do pass as amended. SIGNED BY Senators McManus, Chairman; Conner, Craswell, Deccio, Granlund, Kiskaddon, Moore.

Senate Staff: Jane Habegger (753-7708)

SYNOPSIS AS OF APRIL 8, 1983

BACKGROUND:

Currently, there is quite a proliferation of professions and occupations in the health area which have obtained licensure, at least 21 in the state of Washington. Every year the legislature encounters new groups seeking regulation, and legislative committees are finding it increasingly difficult to judge the appropriateness of creating new professions, ostensibly in the name of protecting the public safety, without further fragmenting the health care delivery system. In addition, the granting of the privilege of licensure or regulation entails certain consequences which may work against the public interest, such as restricted entry into the profession, and higher professional fees. There is a need for establishing guidelines for the legislature in assessing the need for regulatory schemes for new health occupations, as well as existing ones which seek substantive expansion of their scopes of practice.

SUMMARY:

Legislative intent declares that health licensure be imposed for the exclusive purpose of protecting the public interest. Criteria

Appendix 8 RCW 18.120. Hx 003.jpg (Resized to 45%, Show actual size)

public protection in the most cost-effective and least restrictive manner.

Groups seeking regulation are required to explain factors as requested by legislative committees, such as potential harm to the public safety, alternatives to regulation, benefits and harm to the public of regulation, maintenance of standards and impact on costs.

A dedicated health professions fund is created composed of all license fees of health professions regulated. The costs of regulation are to be borne exclusively from licensure fees and all licensed health professions shall be self-sustaining.

The director of licensing is made up of ex-officio members of each health regulatory board for those licensed professions under his jurisdiction.

Fiscal Note: available

SUMMARY OF PROPOSED SENATE COMMITTEE AMENDMENT:

The dedicated fund is changed to an account within the general fund so money can be transferred from that account to the general fund and vice versa.

Appendix 8 RCW 18.120. Hx 004.jpg (Resized to 45%, Show actual size)

FINAL LEGISLATIVE BILL REPORT

SHB 359PARTIAL VETO --- C 168 L 83

BY Committee on Social & Health Services (originally sponsored by Representatives Kreidler, B. Williams, Sommers, Lewis, Walk, Dellwo and Niemi)

Establishing guidelines for the regulation of health professions and occupations not now regulated.

HOUSE COMMITTEE on Social & Health Services

SENATE COMMITTEE on Social & Health Services

SYNOPSIS AS ENACTED**BACKGROUND:**

Licensing is required for the members of at least 21 health related professions and occupations in the state of Washington. Every year the legislature encounters new groups seeking licensure for their members. Granting the privilege of licensure to new groups tends to further fragment the health care delivery system and entails certain consequences which may work against the public interest, such as restricted entry into the profession, and high professional fees. There are no guidelines established for the legislature to assess the need for regulatory schemes for new health occupations, or to modify existing ones for occupations which seek substantive expansion of their scopes of practice.

Dental Hygienists are licensed by the state but there is no statutory body to administer examinations for candidates for licensure. Currently the Department of Licenses contracts with the Board of Dental Examiners to administer examinations.

SUMMARY:

Legislative intent declares that licensure of health care professions be imposed for the exclusive purpose of protecting public interest. The criteria specified for determining the need for regulation include: (1) demonstrated harm to the public safety; (2) public benefit derived from the establishment of professional competence; and, (3) public protection in the most cost-effective and least restrictive manner. Groups seeking licensure are required to explain factors as requested by

Appendix 8 RCW 18.120. Hx 005.jpg (Resized to 45%, Show actual size)

legislative committees, such as potential harm to the public safety, alternatives to regulation, benefits and harm to the public resulting from regulation, maintenance of standards and impact on costs. A dedicated health professions account is created which is composed of all license fees paid by licensed health professions regulated. The costs of regulation are to be borne exclusively from license fees and all licensed health professions shall be self-sustaining. The director of licensure is made an ex-officio member of each health licensing board for those professions under his jurisdiction.

A committee of three dental hygienists is created to prepare examinations for dental hygienists license candidates. The committee is effective immediately.

VOTES ON FINAL PASSAGE:

House	98	0
Senate	47	1 (Senate amended)
House	87	10 (House concurred)

EFFECTIVE: July 24, 1983

PARTIAL VETO SUMMARY:

The governor vetoed the emergency clause which established the Dental Hygienist Examining Committee immediately. The section will become effective 90 days after adjournment.

Appendix 8 RCW 18.120. Hx 006.jpg (Resized to 45%, Show actual size)

H. B. 359 by Representatives Kreidler,
E. Williams, Sommers, Lewis, Walk,
Dellwo, Niemi

Establishing guidelines for the regulation of health professions and occupations not now regulated.

Establishes criteria for the regulation of health care professions that are not currently regulated. Requires specific showing of the necessity to regulate and the lack of reasonable alternatives.

Creates a permanent fund in the state treasury to be known as the professional licensing fund. Transfers the optometry accounts to the fund. Directs the use and accounting of the fund.

--1983 REGULAR SESSION--

Feb 1 First reading, referred to
Social & Health Services.

Important
Important

Appendix 8 RCW 18.120. Hx 007.jpg (Resized to 45%, Show actual size)

REPORT OF STANDING COMMITTEE

APRIL 8, 1983

SUBSTITUTE HOUSE BILL

NO. 359

(Type in brief title exactly as it appears on back cover of original bill)

Establishing guidelines for the regulation of health professions and occupations not now regulated

(reported by Committee on Social and Health Services): (7)

Recommendation - Majority

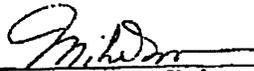
Do pass

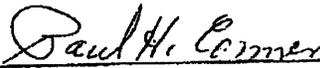
Do pass as amended

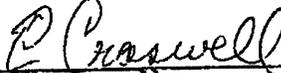
That Substitute Senate Bill No. _____ be substituted therefor, and the substitute bill do pass

Other _____

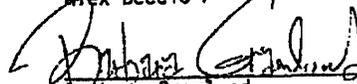
McManus, Chairman
Conner
Craswell
Deccio
Granlund
Kiskaddon
Moore


Mike McManus, Chairman


Paul Conner


Ellen Craswell


Alex Deccio


Barbara Granlund


Bill Kiskaddon


Ray Moore

Appendix 8 RCW 18.120. Hx 008.jpg (Resized to 45%, Show actual size)

HOUSE OF REPRESENTATIVES

Olympia, Washington

BILL ANALYSIS

Bill No. HB 359

Comp. Meas. _____

Health Professions guideline

Status _____

Brief Title

Date 2/10/83

Reps. Kreidler, B. Williams, Sommers, and others

Staff Contact Welsh 3-051

Sponsor

Committee on SHS

*Shrout's in
hall using
18.770 v.
unregulated*

PURPOSE:

To provide guidelines for the legislature in assessing the need for establishing a regulatory scheme for new health professions or existing health professions which seek to substantively expand their scope of authorized practice; to require health groups seeking state regulation to meet criteria as justification for state regulation; to establish a dedicated professional licensure fund for all regulated health groups.

Sec. 1:

NEW SECTION. (1) Declares purpose of act to establish guidelines for regulating new health professions or existing health professions seeking substantial increase in scope of the practice;

(2) Declares intent that health licensure be imposed for exclusive purpose of protecting public interest; Specifies criteria for determining need for regulation as: (a) demonstrat harm to public health; (b) public benefit from professional competence; (c) public protection in most cost-effective manner

(3) Advises use of least restrictive method of regulation consistent with public interest such as provision for civil actions, criminal prosecutions, injunctive relief, registration certification or licensure.

NEW SECTION. Provides definitions: "Certification" means recognition granted to an individual who meets prerequisite qualifications; "Health" means those licensed health practitioners licensed under Title 18 RCW; "License" means nontransferable authority to carry on a health activity based on the qualifications of graduation from an accredited program and passage of qualifying examination; "Registration" means requiring notification to state of name, location and nature of health activity.

*Sec. 1
SHS
18.770 v.
unregulated
Shrout's in
hall using
18.770 v.
unregulated*

Appendix 8 RCW 18.120. Hx 009.jpg (Resized to 45%, Show actual size)

- Sec. 3: NEW SECTION. Requires groups seeking licensure to explain factors as requested by legislative committees: (1) Definition of problem, including potential harm to public, extent of benefit to public, extent of autonomy consistent with judgment, skill, experience, and extent of supervision;
- (2) Efforts made to address the problem, including code of ethics, dispute mechanism for public, use of applicable laws;
- (3) Alternatives considered such as regulation of employers, service, registration, or certification;
- (4) Benefit to the public if regulation granted, including assurance of competence, nature of the proposed regulatory entity, e.g., board; authority regarding examinations, discipline, rules, inspections, fees; consideration of grandfather clause, standards of other jurisdictions, reciprocity agreements, training and experience, continuing competence, sunset, renewal;
- (5) Extent of harm to public of regulation, including restriction of entry into profession, excessively restrictive standards, reciprocity of regulation via other jurisdictions, inclusion of other groups;
- (6) Maintenance of standards, including quality assurance standards, code of ethics, grounds for suspension, revocation;
- (7) Description of group proposed for regulation;
- (8) Impact of regulation on cost of services.
- Sec. 4: NEW SECTION. Cites chapter as "Washington Regulation of Health Professions Act."
- Sec. 5: NEW SECTION. Creates dedicated professional licensing fund in state treasure composed of fees received for professional licenses, registration, certifications, renewals, examinations; requires all expenses of regulation activity to be paid out of fund; provides for accumulation of revenues, no reversion to general fund; requires director of licensing to prepare budget based on anticipated costs of regulation program.
- Sec. 6: NEW SECTION. Transfers funds balances in optician, optometry & psychology accounts to professional licensing fund.
- Sec. 7: NEW SECTION. Transfers and credits to professional licensing fund all appropriations to Department of Licensing for licensure activities.
- Sec. 8: Authorizes Director of Licensing to specify due date for payment of optometry licensure fees; repeals dedicated account for