

TABLE OF CONTENTS

I. ERRORS OF THE COURT BELOW _____ 1

A. Assignments of Error. _____ 1

B. Issues Pertaining to the Assignments of Error _____ 2

II. STATEMENT OF THE CASE _____ 3

A. Procedural History _____ 3

B. Factual Background. _____ 4

III. STANDARD OF REVIEW _____ 5

IV. ARGUMENT _____ 6

A. The Department of Health’s finding that Stanzak committed professional misconduct is void because it lacked subject matter jurisdiction to conduct a disciplinary hearing in the matter. _____ 6

1. The State Legislature denied the Department of Health and the Secretary of Health the statutory authority to conduct hearings in disciplinary actions involving Licensed Clinical Social Workers alleged to have committed professional misconduct. _____ 7

 a. When interpreting a statute, Washington law requires a court to adhere to the intent of the legislature as expressed in the plain language of the statute and its context. _____ 7

 b. Legislative history may be used to discern legislative intent when statutory language is ambiguous. _____ 8

 c. Under the plain meaning of The Uniform Disciplinary Act (RCW 18.130.010 et seq.), the Secretary of Health does not have the authority to conduct disciplinary hearings involving a charge of professional misconduct lodged against a Licensed Clinical Social Worker. _____ 8

 d. The legislative history of the Uniform Disciplinary Act (RCW 18.130.010, et seq.), reveals that the legislature intentionally denied the Department the statutory authority to conduct the disciplinary hearing at issue. _____ 12

2. Without statutory authority to conduct the hearing, the Department of Health lacked subject matter jurisdiction over the question of whether Stanzak committed professional misconduct as well as the authority to issue a finding. _____ 14

a. Subject matter jurisdiction is lacking when the tribunal lacks authority to adjudicate a claim. _____ 14

b. The reliance on Yow by the Department and the court below as proof of the Department’s statutory authority to conduct the hearing in this case is misplaced because the Department was given specific authority to conduct hearings regarding whether an unlicensed individual was engaged in the provision of health care services. _____ 14

3. By using an invalid and unauthorized procedure to find Stanzak had committed professional misconduct, the Department of Health violated Stanzak’s right to due process. _____ 16

B. A Superior Court has subject matter jurisdiction and the authority to grant relief to the complaining party over a claim that an Administrative Agency took action when it lacked subject matter jurisdiction. _____ 18

1. It is proper for a claimant to seek relief in Superior Court in a separate action, rather than through an appeal, from a void administrative agency order or action when that agency lacked subject matter jurisdiction and has deprived the claimant of his right to due process. _____ 18

a. Appellate procedures, including deadlines and other requirements and restrictions, do not apply to void orders and an aggrieved party may file an action in Superior Court. _____ 18

b. It is appropriate for a claimant to seek relief in Superior Court when an administrative agency action has deprived him of his right to due process. _____ 21

2. A Superior Court may grant declaratory and injunctive relief to a party complaining of an invalid Administrative Agency action, and may direct the Administrative Agency to address the underlying manner according to statutory provisions.	22
C. Dismissal of Mr. Stanzak’s complaint was improper because the Superior Court had subject matter jurisdiction and could have granted Mr. Stanzak the relief he sought.	22
V. CONCLUSION	23
VI. APPENDIX	25

TABLE OF AUTHORITIES

Cases

Burton v. Lehman, 153 Wn.2d 416, 103 P.3d 1230 (2005).	7
Cockle v. Dep’t of Labor & Indus., 142 Wn.2d 801, 16 P.3d 583 (2001).	8
Crescent Convalescent Center v. Dep’t of Social and Health Services, 87 Wn. App. 353, 942 P.2d 981 (Div. III 1997)	17
Dep’t of Ecology v. Campbell, Campbell & Gwinn, L.L.C, 146 Wn.2d 1, 43 P.3d 4 (2002).	7
Emwright v. King County, 96 Wn.2d 538, 637 P.2d 656 (1981)	8
Hanson v. City of Snohomish, 121 Wn.2d 552, 561-62, 852 P.2d 295 (1993)	20
Human Rights Commission v. Cheney School District No. 30, 97 Wn.2d 118, 641 P.2d 163 (1982)	21
Indoor Billboard/Wash., Inc. v. Integra Telecom of Wash., Inc., 162 Wn.2d 59, 170 P.3d 10 (2007)	5
Kinney v. Cook, 159 Wn.2d 837, 154 P.3d 206 (2007)	6
Loveridge v. Fred Meyer, Inc., 125 Wn.2d 759,, 887 P.2d 898 (1995)	20
Appellant’s Opening Brief	-iii-

Marley v. Dep't of Labor and Indus., 72 Wn. App. 326, 330, 864 P.2d 960 (1993)	18
Marley v. Dep't of Labor and Indus., 125 Wn.2d 533, 886 P.2d 189 (1994)	6, 7, 14
Nguyen v. Dep't of Health, Med. Quality Assurance Comm'n, 144 Wn.2d 516, 29 P.3d 689 (2001)	17
San Juan County v. No New Gas Tax, 160 Wn. 2d 141, 157 P. 3d 831	22
Veach v. Culp, 92 Wn.2d 570, 599 P.2d 526 (1979)	5
Yow v. Dep't of Health Unlicensed Practice Program, 147 Wn. App. 807, 199 P.3d 417 (Div I, 2008)	15, 16

Statutes

RCW 7.16.170	22
RCW 7.16.290	22
RCW 7.24	22
RCW 7.40	22
RCW 18.130	8
RCW 18.130.040	8
RCW 18.130.040(2)(a)	9
RCW 18.130.040(2)(b)	9, 10, 11
RCW 18.130.050	1, 2, 21
RCW 18.130.050(10)	9, 10
RCW 18.130.062	13
RCW 18.130.095(3)	9, 10, 24
RCW 18.130.190	15

RCW 18.130.050(8) (1992)	12
RCW 34.05.570	21
RCW 35.05.010 <i>et seq.</i>	23

Rules

CR 12(b)(6)	6, 22
CR 65	22

I. ERRORS OF THE COURT BELOW

A. Assignments of Error.

1. The court below erred when it granted Respondent's motion for dismissal of Appellant's Complaint seeking Declaratory Relief, a Preliminary Injunction, and a writ of mandamus.
2. The court below erred when it ruled that it did not have subject matter jurisdiction over the Complaint filed by Mr. Stanzak.
3. The court below erred when it found that Mr. Stanzak did not assert a claim for which it could properly grant relief.
4. The court below erred when it concluded that the Department of Health had subject matter jurisdiction pursuant to statutory authority granted by RCW 18.130.050 to conduct hearings in disciplinary actions against Licensed Clinical Social Workers charged with "professional misconduct."
5. The court below erred when it dismissed Mr. Stanzak's claim that his right to due process was violated when the Department of Health entered an order of suspension of his professional license based on a finding made during a proceeding that was void for lack of subject matter jurisdiction.

B. Issues Pertaining to the Assignments of Error

1. Does the Department of Health have subject matter jurisdiction pursuant to statutory authority granted by RCW 18.130.050 to conduct hearings in disciplinary actions against Licensed Clinical Social Workers charged with professional misconduct? (Assignments of error 1, 2 and 4.)
2. When the Secretary of the Department of Health improperly conducts a hearing regarding disciplinary actions against Licensed Clinical Social Workers, are all provisions of the APA governing appeals applicable to obtaining judicial review of the propriety of such hearings, or may the matter be addressed in a separate action filed in Superior Court? (Assignments of error 1, 2, and 3.)
3. Is an order of disciplinary suspension of a professional license a violation of the license holder's rights to due process when the order of suspension is based on findings that are void because the tribunal lacked subject matter jurisdiction to hear the case? (Assignment of error 5.)
4. May a writ of mandamus, declaratory and injunctive relief be granted to a Plaintiff who files a Complaint in Superior Court based on the invalid suspension of his Social Worker credential by an

administrative agency that lacked subject matter jurisdiction to conduct the disciplinary hearing? (Assignment of error 3.)

II. STATEMENT OF THE CASE

A. Procedural History

An Administrative Hearing was conducted by the Department of Health on August 13 -15, 2008 and on August 22, 2008 in the matter of allegations of professional misconduct on the part of David Stanzak, a Licensed Clinical Social Worker. *CP 211*. The presiding officer of the hearing, as well as the individual charged with reaching a decision in the matter, was Christopher Swanson, Health Law Judge, employee of the Department of Health, and designee of the Secretary of Health. *CP 30*. The outcome of that hearing was a two-year suspension of Mr. Stanzak's credential. *CP 52*. On May 6, 2009, Mr. Stanzak filed a Complaint in Thurston County Superior Court seeking, *inter alia*, relief in the form of declaratory judgment based on the fact that the Department of Health – and therefore the Secretary of Health and her designees - lacked subject matter jurisdiction to conduct the hearing because it was statutorily required that the matter be submitted for hearing by the Office of Administrative Hearings. *CP 4 – 11*. Mr. Stanzak's Complaint was dismissed in its entirety on July 24, 2009 pursuant to a motion by the

Department of Health for failure to state a claim upon which relief could be granted and the Superior Court's lack of Subject Matter Jurisdiction. *CP 215.*

B. Factual Background.

Mr. David Stanzak, Appellant, was granted a license to practice as a Licensed Independent Clinical Social Worker in the State of Washington on July 22, 2001. *CP 33, 106, 116.* In May of 2006, Mr. Stanzak provided counseling services on two occasions to a mother who was having issues with her stepdaughter. *CP 106.* When the mother did not pay for a missed appointment as was called for in the patient agreement, Mr. Stanzak sent the matter of the unpaid bill to a collection agency, at which point the mother filed a complaint against Mr. Stanzak with the Department of Health. *Id.* As a result of that complaint, the Department of Health alleged that Mr. Stanzak committed unprofessional conduct in his provision of counseling services to the mother and her daughter, *CP 71*, as well as other allegations which were dismissed, *CP 72, footnote 1.* A disciplinary hearing was conducted by the Department of Health, with Christopher Swanson, a Health Law Judge designated by the Secretary of the Department of Health, acting as the presiding officer and adjudicator. *CP 71.* Christopher Swanson ordered that Mr. Stanzak's credential be suspended for two years. *CP 93.* On May 6, 2009, Mr. Stanzak filed a

Appellant's Opening Brief

Complaint in Thurston County Superior Court seeking, *inter alia*, declaratory relief based on the Department of Health's lack of subject matter jurisdiction over the matter, a violation of Mr. Stanzak's due process rights. *CP 4 – 11*. Mr. Stanzak sought relief in the form of a declaratory judgment, an injunction, and a petition for a writ of mandamus. *Id.* Mr. Stanzak's Complaint was dismissed in its entirety on July 24, 2009 when the court below – relying extensively on two cases cited by the Department of Health as determinative, *CP 214*, - granted the Department's motion to dismiss for failure to state a claim upon which relief could be granted and the Superior Court's lack of Subject Matter Jurisdiction over the matter. *CP 215*. Notice of Appeal was properly and timely filed on August 24, 2009. *CP 208*.

III. STANDARD OF REVIEW

Questions of law and conclusions of law are reviewed *de novo*. *Veach v. Culp*, 92 Wn.2d 570, 573, 599 P.2d 526 (1979). A challenge to a tribunal's subject matter jurisdiction to hear a claim is reviewed *de novo*. *Indoor Billboard/Wash., Inc. v. Integra Telecom of Wash., Inc.*, 162 Wn.2d 59, 71, 170 P.3d 10 (2007). As the question before this tribunal is whether the Department of Health had subject matter jurisdiction to conduct the hearing in the matter of a Licensed Clinical Social Worker

Appellant's Opening Brief

accused of professional misconduct, the question before this Court is one of law to be reviewed *de novo*.

Additionally,

A trial court's ruling to dismiss a claim under *CR 12(b)(6)* is reviewed *de novo*. Dismissal is warranted only if the court concludes, beyond a reasonable doubt, the plaintiff cannot prove any set of facts which would justify recovery. The court presumes all facts alleged in the plaintiff's complaint are true and may consider hypothetical facts supporting the plaintiff's claims. A motion to dismiss is granted sparingly and with care and, as a practical matter, only in the unusual case in which plaintiff includes allegations that show on the face of the complaint that there is some insuperable bar to relief.

Kinney v. Cook, 159 Wn.2d 837, 842 154 P.3d 206, 209 (2007)

(citations and internal quotation marks omitted).

IV. ARGUMENT

A. The Department of Health's finding that Stanzak committed professional misconduct is void because it lacked subject matter jurisdiction to conduct a disciplinary hearing in the matter.

As was noted in *Marley v. Dep't of Labor and Indus.*, 125 Wn.2d 533; 886 P.2d 189 (1994), a void judgment exists whenever the issuing court lacks personal jurisdiction over the party or subject matter jurisdiction over the claim. *Id.* at 539. A tribunal lacks subject matter jurisdiction when it attempts to decide a type of controversy over which it has no authority to adjudicate. *Id.* By implication, a void judgment exists

whenever the issuing court lacks subject matter jurisdiction over the claim.

Id.

1. The State Legislature denied the Department of Health and the Secretary of Health the statutory authority to conduct hearings in disciplinary actions involving Licensed Clinical Social Workers alleged to have committed professional misconduct.

a. When interpreting a statute, Washington law requires a court to adhere to the intent of the legislature as expressed in the plain language of the statute and its context.

When a court is interpreting a statute, it must determine the legislature's intent. *Dep't of Ecology v. Campbell, Campbell & Gwinn, L.L.C.*, 146 Wn.2d 1, 9, 43 P.3d 4 (2002). And "if the statute's meaning is plain on its face, then the court must give effect to that plain meaning as an expression of legislative intent." *Id.* at 9-10. To give effect to the "plain meaning," a court examines the ordinary meaning of the language at issue, the context of the statute in which that provision is found, related provisions, and the statutory scheme as a whole. *See id.* at 9-12. If a statutory term is undefined, the court gives that term its usual and ordinary meaning. *Burton v. Lehman*, 153 Wn.2d 416, 422-23, 103 P.3d 1230 (2005).

b. Legislative history may be used to discern legislative intent when statutory language is ambiguous.

In general, it is not necessary to examine the legislative history. While statutory provisions and rules should be harmonized whenever possible, *Emwright v. King County*, 96 Wn.2d 538, 543, 637 P.2d 656 (1981), only if the statutory language is susceptible to more than one reasonable interpretation should a court resort to statutory construction, legislative history, and relevant case law for assistance in discerning legislative intent. *Cockle v. Dep't of Labor & Indus.*, 142 Wn.2d 801, 808, 16 P.3d 583 (2001).

c. Under the plain meaning of The Uniform Disciplinary Act (RCW 18.130.010 et seq.), the Secretary of Health does not have the authority to conduct disciplinary hearings involving a charge of professional misconduct lodged against a Licensed Clinical Social Worker.

The Uniform Disciplinary Act (RCW 18.130.010 et seq.) (hereinafter “UDA”) gives the Department of Health (hereinafter “Department” or “DOH”) the authority to suspend the license of licensed health care practitioners – in other words, it makes the Department of Health the disciplining authority over that profession - and governs the procedures that must be followed when doing so. *RCW 18.130.040*. The UDA, however, does not give the Department the authority to conduct the disciplinary

hearings in cases where Licensed Clinical Social Workers are accused of professional misconduct.

Although many of the health care professions are administered by Boards or Commissions known as “Full Authority Boards,” Licensed Clinical Social Workers are not administered by such a Board or Commission. *RCW 18.130.040(2)(b)*. When a Board or Commission administers a particular a health care profession, it is the Board or Commission that functions as the disciplinary authority for those who are licensed to practice that health care profession. *RCW 18.130.040(2)(b)*.

When a health care profession is not administered by a “Full Authority Board,” the Secretary of Health acts as the disciplining authority. *RCW 18.130.040(2)(a)*. Licensed Clinical Social Workers are among those who are subject to the disciplinary authority of the Secretary of Health. *Id.* However, this authority is restricted by the UDA, which prohibits the Secretary of Health from actually conducting disciplinary hearings involving Licensed Clinical Social Workers.

RCW 18.130.050(10) restricts the use of a presiding officer to those situations authorized by *RCW 18.130.095(3)*, which in turn specifies that otherwise the Secretary of Health must not function

as, or appoint, a presiding officer but must instead refer the matter to the Office of Administrative Hearings as authorized in RCW 34.12. *RCW 18.130.050(10), RCW 18.130.095(3).* RCW 18.130.095(3).

RCW 18.130.095(3) expressly restricts the Secretary of Health functioning as a presiding officer as an alternative to the Office of Administrative Hearings, allowing it "[o]nly upon the authorization of a disciplining authority identified in RCW 18.130.040(2)(b).” *RCW 18.130.040(2)(b), RCW 18.130.095(3).* In other words, the secretary, or his or her designee, may serve as the presiding officer for any disciplinary proceedings against members of health care professions only when two requirements are satisfied: the individual subject to the disciplinary proceeding must be a member of those health care professions identified in RCW 18.130.040(2)(b); and the disciplining authority who has authority over those health care professions that are identified in RCW 18.130.040(2)(b) has authorized the secretary, or his or her designee, to serve as the presiding officer. *RCW 18.130.040(2)(b); RCW 18.130.095(3)*

But Licensed Clinical Social Workers are not identified in RCW 18.130.040(2)(b), so one of those two conditions fails at the

outset. Without being identified as a health care profession governed by a “Full Authority Board” it is impossible for a Full Authority Board to have authorized the Secretary to act as a presiding officer over any disciplinary hearings related to a Licensed Clinical Social Worker. The secretary must, therefore, refer any disciplinary hearing involving a Licensed Clinical Social Worker to the Office of Administrative Hearings. *RCW 18.130.040(2)(b)*.

Although the interconnections between the various applicable provisions of the UDA are a bit complex, there is no ambiguity. If one follows the referenced provisions, the meaning is clear: disciplinary hearings involving a Licensed Clinical Social Worker are to be conducted by the Office of Administrative Hearings. There simply is no other option allowed under the UDA – no other statutory language in the UDA allows the Secretary to act as a presiding officer over a disciplinary hearing related to a Licensed Clinical Social Worker charged with professional misconduct and none was identified by the Department of Health in the proceedings in the court below.

d. The legislative history of the Uniform Disciplinary Act (RCW 18.130.010, et seq.), reveals that the legislature intentionally denied the Department the statutory authority to conduct the disciplinary hearing at issue.

Even if the circuitous language of the UDA can be construed as rendering it ambiguous, its legislative history supports the contention that the Department of Health does not have subject matter jurisdiction to conduct a hearing related to professional misconduct charges against a Licensed Clinical Social Worker.

Prior to 1993, the disciplinary authority of any health care profession had authority only "to use the office of administrative hearings as authorized in Chapter RCW 34.12 [Office of Administrative Hearings] to conduct hearings." *See CP 127 - 130, 1992 version of RCW 18.130.050(8)*. This was the case for all disciplinary hearings, regardless of profession. When the Washington State Legislature began the process of developing RCW 18.130.095(3), it considered – and rejected - the following language for 18.130.095(3):

In order to assure the uniform application of the procedural rules developed by the secretary, the secretary or his or her designee shall serve as presiding officer for all proceedings under this chapter, including those conducted by disciplinary authorities identified in RCW 18.130.040(2)(b) . . . In those areas where the disciplining authority is a

board, the secretary or his or her designee shall not vote in the final decision.

See CP 132 -33, Journal of the Senate for March 15, 1993 on Sub.

Senate Bill 5948 at p. 624-625.

Five weeks later, the House and Senate both passed the entirety of the UDA with one - and only one - substantive change. The above-quoted language was stricken in its entirety, and the language as it now appears was inserted in its place. *See CP 135 – 36, House Journal for April 22, 1993 on ESSB 5948); See also CP 138, Senate Journal for April 22, 1993 on ESSB 5948.*

Both houses of the State Legislature considered - and both rejected – language that would allow the Secretary and his or her designees to serve as presiding officers for all matters under the UDA. The law that was passed by the legislature allows the Secretary’s designees to serve as presiding officers for licensed members of those professions governed by "Full Authority Boards" when those Boards have explicitly authorized the Secretary to do so, and for members of all professions when the charges lodged against them is sexual misconduct.” *See RCW 18.130.062.*

2. Without statutory authority to conduct the hearing, the Department of Health lacked subject matter jurisdiction over the question of whether Stanzak committed professional misconduct as well as the authority to issue a finding.

a. Subject matter jurisdiction is lacking when the tribunal lacks authority to adjudicate a claim.

A tribunal lacks subject matter jurisdiction when it attempts to decide a type of controversy over which it has no authority to adjudicate. *Marley*, 125 Wn.2d at 539. The absence of subject matter jurisdiction implies that an agency has no authority to decide the claim at all, let alone order a particular kind of relief.

Id.

In this case, the Department of Health has the authority to decide the precise disciplinary action to impose on a Licensed Clinical Social Worker after the issue of whether professional misconduct occurred has been adjudicated, but the Department does not have the authority to adjudicate the issue of whether professional misconduct occurred. Therefore, the Department exceeded its authority when it did so and did not have subject matter jurisdiction over the question of whether discipline was warranted.

b. The reliance on *Yow* by the Department and the court below as proof of the Department's statutory authority to conduct the hearing in this case is misplaced because the Department was

given specific authority to conduct hearings regarding whether an unlicensed individual was engaged in the provision of health care services.

Both the Department and the court below cited *Yow v. Dep't of Health Unlicensed Practice Program*, 147 Wn. App. 807, 199 P.3d 417 (Div I, 2008) as being relevant – if not dispositive – of the question of whether the Secretary of Health has subject matter jurisdiction to decide whether Stanzak, a Licensed Clinical Social Worker, committed professional misconduct. Even the party, “Dep’t of Health Unlicensed Practice Program,” listed in case caption indicates why this reliance is misplaced.

The pertinent issue before the *Yow* court was whether the designee of the Secretary of Health had authority to conduct a hearing to determine whether *Yow* was practicing medicine without a license. *Id.* While the inquiry may have been remotely similar to the issue in the instant case, the pertinent statutes were not. RCW 18.130.190 specifically grants to the Secretary of Health the jurisdiction and authority to adjudicate disputes over whether medicine is being practiced without a license. *RCW 18.130.190.* The *Yow* court decided that where the department appoints an employee, such as a health law judge, to preside over an adjudicative hearing, the issue of the employee's lawful authority

to conduct the adjudication is not one of jurisdiction but of statutory interpretation. *Yow*, 147 Wn. App. at 816.

In fact, the *Yow* court found that “[t]he Department is correct in noting that the secretary has independent statutory authority to conduct adjudications for unlicensed practice.” *Id.*

The question before this body is whether the Secretary of Health has the statutory authority to adjudicate a proceeding convened to decide whether a Licensed Clinical Social Worker committed professional misconduct. It is unrelated to the question of whether the Uniform Disciplinary Act allows the Secretary to appoint a designee to conduct such a hearing. As there is no statute granting the Secretary subject matter jurisdiction to conduct the proceeding, the Secretary does not have the authority to determine whether Mr. Stanzak did or did not commit professional malpractice. Of course if the Secretary does not have the statutory authority to conduct a hearing in a matter – i.e. the Secretary lacked subject matter jurisdiction - it follows that the Department of Health cannot acquire subject matter jurisdiction by designating a Department employee as the presiding officer, fact finder, and interpreter of law.

3. By using an invalid and unauthorized procedure to find Stanzak

had committed professional misconduct, the Department of Health violated Stanzak's right to due process.

A professional license is a protected property interest and the holder is entitled due process rights when an administrative agency seeks to revoke or suspend that license. *Nguyen v. Dep't of Health, Med. Quality Assurance Comm'n*, 144 Wn.2d 516, 29 P.3d 689 (2001), *cert. denied*, 152 L. Ed. 2d 141, 122 S. Ct. 1203, 535 U.S. 904 (2002). Procedural due process rights applicable to the deprivation of a protected property interest include those created by statutes.

“The sources of such a claim are: (1) the terms of a contract, (2) rules or mutually explicit understandings, or (3) statutes that create substantive procedural restrictions on a decision maker's discretion. Statutes and regulations create protected interests when they contain "substantive predicates" or particularized standards or criteria that guide the discretion of official decision makers *and* specific directives that mandate a specific outcome if the substantive predicates are present.

Crescent Convalescent Center v. Dep't of Social and Health Services, 87 Wn. App. 353, 942 P.2d 981 (Div. III 1997), *citations omitted*.

In this case, the legislature instructed the Secretary of Health to turn all adjudications in disciplinary proceedings against a Licensed Clinical Social Worker over to the Office of Administrative Hearings. There was no discretion allowed, and this was a substantive procedural

restriction that was ignored. Hence, the Secretary, her designee, and others violated Stanzak's right to due process when the adjudication was performed by the Department.

B. The Superior Court had subject matter jurisdiction and the authority to grant relief to the complaining party over a claim that an Administrative Agency took action when it lacked subject matter jurisdiction.

1. It is proper for a claimant to seek relief in Superior Court in a separate action, rather than through an appeal, from a void administrative agency order or action when that agency lacked subject matter jurisdiction and has deprived the claimant of his right to due process.

a. Appellate procedures, including deadlines and other requirements and restrictions, do not apply to void orders and an aggrieved party may file an action in Superior Court.

If an order is void when entered, an aggrieved party is not precluded from rearguing the same claim. "If an order is void, then no appeal is necessary and the statute of limitations will not apply." *Marley*, 125 Wn. 2d at 530, *adopting the finding of the lower court, Marley v. Dep't of Labor and Indus.*, 72 Wn. App. 326, 330, 864 P.2d 960 (1993) (*reversed on other grounds*). Had the *Marley II* court found the claimant proved the order she was contesting had indeed been invalid, it would have allowed her to bring an action to challenge it in Superior Court. *See generally, Marley*, 125 Wn. 2d 533..

In this case, the void order is the one issued by Christopher Swanson as “Health Law Judge” stating that Stanzak had committed professional misconduct. Contesting the validity of that order after the appeal deadline has passed is allowed under the common law adopted by the *Marley* Courts both at the appellate level and upheld by the Washington State Supreme Court on appeal. *Id.*

In this case, Stanzak brings a separate action seeking relief from an agency order because the issues on which his complaint was based are not the same as the issues that were before the Department in the original action. Stanzak’s complaint alleges that the Department, and the individuals involved, did not have the statutory authority to conduct the disciplinary hearing – the Department lacked subject matter jurisdiction. Stanzak is not now asking that any of the issues that were before the tribunal conducting the hearing be litigated in the present action, only the issue of subject matter jurisdiction and the validity of the court’s order.

Therefore, Stanzak’s current claims are not precluded by res judicata, or claim preclusion. Those doctrines would only apply when a prior judgment and a subsequent action are identical as to

(1) persons and parties, (2) cause of action, (3) subject matter, and (4) the quality of persons for or against whom the claim is made. *Loveridge v. Fred Meyer, Inc.*, 125 Wn.2d 759, 763, 887 P.2d 898 (1995). Collateral estoppel, or issue preclusion, applies when (1) the issues are identical; (2) the prior adjudication ended with a final judgment on the merits; (3) the party against whom the plea is asserted was a party to the prior adjudication; and (4) application of the doctrine does not work an injustice. *Hanson v. City of Snohomish*, 121 Wn.2d 552, 561-62, 852 P.2d 295 (1993).

There is no applicable procedural or doctrinal bar to Stanzak's pursuit of relief from an invalid agency order in Superior Court. The relief Stanzak seeks is in response to the failure of an administrative agency to act within its statutory scope of authority and is equitable in nature. The questions posed and the relief sought would not be properly put before the Department of Health or the Office of Administrative Hearings, and any attempt to do so would have been futile. The issues raised by Stanzak were properly before the court below and their dismissal was improper.

b. It is appropriate for a claimant to seek relief in Superior Court when an administrative agency action has deprived him of his right to due process.

Even the Administrative Procedures Act allows a court to grant relief to a party who has been aggrieved by an agency order that is “in violation of constitutional provisions on its face or as applied.” *RCW 34.05.570*. Whether the claims at bar are subjected to the constraints of the Administrative Procedure Act and exempted from the appeal procedures and deadlines as held in the *Marley cases*, or if this action is independent of the Administrative Procedures Act, certainly it is proper to request a Superior Court to rule on the constitutional issues posed by Stanzak in this action.

"Administrative agencies are creatures of the legislature without inherent or common-law powers and may exercise only those powers conferred either expressly or by necessary implication." *Human Rights Commission v. Cheney School District No. 30*, 97 Wn.2d 118, 125; 641 P.2d 163, 167 (1982)

In this case, an examination of 18.130.050 reveals no statutory authority granted by the legislature allowing the Department to resolve constitutional challenges to its own procedures. *RCW 18.130.150*. Therefore, it is not proper to seek administrative

agency review of a constitutional question as administrative agencies lack authority to rule on such issues.

2. The Superior Court may grant declaratory and injunctive relief to a party complaining of an invalid Administrative Agency action, and may direct the Administrative Agency to address the underlying manner according to statutory provisions.

The types of relief that a court may grant to a claimant who has been subjected to an invalid agency action encompass a variety of equitable remedies, and are arguably allowed, at least generally, by various statutes.

RCW 7.24, *et seq.*, and CR 57 grant Superior Courts the authority to issue declaratory judgments; RCW 7.16.170 allows Superior Courts to issue writs of mandamus; RCW 7.16.290, allow Superior Courts to issue writs of prohibition; and RCW 7.40 *et seq.*, and CR 65 allow Superior Courts to issue injunctions.

C. Dismissal of Mr. Stanzak's complaint was improper because the Superior Court had subject matter jurisdiction and could have granted Mr. Stanzak the relief he sought.

Dismissal on CR 12(b)(6) grounds for failure to state a claim on which the court is allowed to grant relief is a procedure that courts have been warned to use sparingly. *San Juan County v. No New Gas Tax*, 160 Wn. 2d 141, 164, 157 P. 3d 831, 842 (2007). In this case, it was improper. The court below had subject matter jurisdiction over Stanzak's complaint

for the simple reason that the Department lacked subject matter jurisdiction to conduct a disciplinary hearing involving Stanzak – a Licensed Social Worker – when the charge was professional misconduct. The finding that Stanzak had committed professional misconduct was void, and the resulting suspension of his professional license was, therefore, an unconstitutional exercise for Stanzak was not afforded due process before his license was suspended.

When an agency order is void, the usual restrictions regarding appeals and appeal deadlines as codified in RCW 35.05.010 *et seq.* do not apply and Stanzak had the right to bring an action in Superior Court to right the wrong that had been done to him. The court, by virtue of a variety of statutes and court rules, had the authority to grant Stanzak declaratory, injunctive, and other relief that he sought.

Dismissal of Stanzak's claim was improper and unwarranted because the action was properly brought and the court below had the jurisdiction and authority to hear the matter and grant appropriate relief.

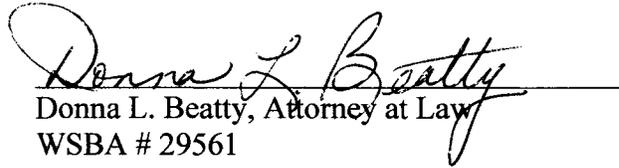
V. CONCLUSION

The court below erred when it dismissed Mr. Stanzak's complaint. It should have found that the Department of Health's findings in the matter were void and ordered the Department of Health to allow a new hearing to be conducted by the Office of Administrative Hearings pursuant to RCW

18.130.095(3). Stanzak respectfully asks that this Court reverse the decision of the court below and grant him the relief he sought there.

December 18, 2009

Respectfully submitted,

A handwritten signature in cursive script that reads "Donna L. Beatty". The signature is written in black ink and is positioned above a horizontal line.

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VI. APPENDIX

Table of Contents and Relevant Sections of RCW 18.130.010 *et seq.*

Chapter 18.130 RCW

Regulation of health professions — uniform disciplinary act

RCW Sections

- 18.130.010 Intent.
- 18.130.020 Definitions.
- 18.130.035 Background check activities -- Fees.
- 18.130.037 Application and renewal fees.
- 18.130.040 Application to certain professions -- Authority of secretary -- Grant or denial of licenses -- Procedural rules.
- 18.130.045 Massage practitioners -- Procedures governing convicted prostitutes.
- 18.130.050 Authority of disciplining authority.
- 18.130.055 Authority of disciplining authority -- Denial of applications.
- 18.130.060 Additional authority of secretary.
- 18.130.062 Authority of secretary -- Disciplinary process -- Sexual misconduct.
- 18.130.064 Authority and duties -- Secretary and disciplining authority -- Background checks.
- 18.130.065 Rules, policies, and orders -- Secretary's role.
- 18.130.070 Rules requiring reports -- Court orders -- Immunity from liability -- Licensees required to report.
- 18.130.075 Temporary practice permits -- Penalties.
- 18.130.080 Unprofessional conduct -- Complaint -- Investigation -- Civil penalty.
- 18.130.085 Communication with complainant.

Appellant's Brief

Appendix

Relevant Sections of RCW 18.130

- 18.130.090 Statement of charge -- Request for hearing.
- 18.130.095 Uniform procedural rules.
- 18.130.098 Settlement -- Disclosure -- Conference.
- 18.130.100 Hearings -- Adjudicative proceedings under chapter 34.05 RCW.
- 18.130.110 Findings of fact -- Order -- Report.
- 18.130.120 Actions against license -- Exception.
- 18.130.125 License suspension -- Nonpayment or default on educational loan or scholarship.
- 18.130.127 License suspension--Noncompliance with support order -- Reissuance.
- 18.130.130 Orders -- When effective -- Stay.
- 18.130.135 Suspension or restriction orders -- Show cause hearing.
- 18.130.140 Appeal.
- 18.130.150 Reinstatement.
- 18.130.160 Finding of unprofessional conduct -- Orders -- Sanctions -- Stay -- Costs -- Stipulations.
- 18.130.165 Enforcement of fine.
- 18.130.170 Capacity of license holder to practice -- Hearing -- Mental or physical examination -- Implied consent.
- 18.130.172 Evidence summary and stipulations.
- 18.130.175 Voluntary substance abuse monitoring programs.
- 18.130.180 Unprofessional conduct.
- 18.130.185 Injunctive relief for violations of RCW 18.130.170 or 18.130.180.
- 18.130.186 Voluntary substance abuse monitoring program -- Content -- License surcharge.
- 18.130.190 Practice without license -- Investigation of complaints -- Cease and desist orders -- Injunctions -- Penalties.
- 18.130.195 Violation of injunction -- Penalty.

Appellant's Brief
Appendix
Relevant Sections of RCW 18.130

- 18.130.200 Fraud or misrepresentation in obtaining or maintaining a license -- Penalty.
- 18.130.210 Crime by license holder -- Notice to attorney general or county prosecuting attorney.
- 18.130.230 Production of documents -- Administrative fines.
- 18.130.250 Retired active license status.
- 18.130.270 Continuing competency pilot projects.
- 18.130.300 Immunity from liability.
- 18.130.310 Biennial report -- Contents -- Format.
- 18.130.340 Opiate therapy guidelines.
- 18.130.350 Application--Use of records or exchange of information not affected.
- 18.130.360 Retired volunteer medical worker license -- Supervision -- Rules.
- 18.130.370 Prohibition on practicing in another state -- Prohibited from practicing in this state until proceedings of appropriate disciplining authority are completed.
- 18.130.380 Budget request -- Specification of employees designated as investigators and attorneys -- Development of formula -- Joint legislative audit and review committee report.
- 18.130.390 Sanctioning schedule -- Development.
- 18.130.900 Short title -- Applicability.
- 18.130.901 Severability -- 1984 c 279.

Appellant's Brief
Appendix
Relevant Sections of RCW 18.130

RCW 18.130.010

Intent.

It is the intent of the legislature to strengthen and consolidate disciplinary and licensure procedures for the licensed health and health-related professions and businesses by providing a uniform disciplinary act with standardized procedures for the licensure of health care professionals and the enforcement of laws the purpose of which is to assure the public of the adequacy of professional competence and conduct in the healing arts.

It is also the intent of the legislature that all health and health-related professions newly credentialed by the state come under the Uniform Disciplinary Act.

Further, the legislature declares that the addition of public members on all health care commissions and boards can give both the state and the public, which it has a statutory responsibility to protect, assurances of accountability and confidence in the various practices of health care.

[1994 sp.s. c 9 § 601; 1991 c 332 § 1; 1986 c 259 § 1; 1984 c 279 § 1.]

Notes:

Severability -- Headings and captions not law -- Effective date -- 1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

Application to scope of practice -- 1991 c 332: "Nothing in sections 1 through 39 of this act is intended to change the scope of practice of any health care profession referred to in sections 1 through 39 of this act." [1991 c 332 § 46.]

Captions not law -- 1991 c 332: "Section captions and part headings as used in this act constitute no part of the law." [1991 c 332 § 43.]

Severability -- 1986 c 259: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1986 c 259 § 152.]

Appellant's Brief
Appendix
Relevant Sections of RCW 18.130

RCW 18.130.020

Definitions.

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Board" means any of those boards specified in RCW 18.130.040.

(2) "Clinical expertise" means the proficiency or judgment that a license holder in a particular profession acquires through clinical experience or clinical practice and that is not possessed by a lay person.

(3) "Commission" means any of the commissions specified in RCW 18.130.040.

(4) "Department" means the department of health.

(5) "Disciplinary action" means sanctions identified in RCW 18.130.160.

(6) "Disciplining authority" means the agency, board, or commission having the authority to take disciplinary action against a holder of, or applicant for, a professional or business license upon a finding of a violation of this chapter or a chapter specified under RCW 18.130.040.

(7) "Health agency" means city and county health departments and the department of health.

(8) "License," "licensing," and "licensure" shall be deemed equivalent to the terms "license," "licensing," "licensure," "certificate," "certification," and "registration" as those terms are defined in RCW 18.120.020.

(9) "Practice review" means an investigative audit of records related to the complaint, without prior identification of specific patient or consumer names, or an assessment of the conditions, circumstances, and methods of the professional's practice related

Appellant's Brief
Appendix
Relevant Sections of RCW 18.130

to the complaint, to determine whether unprofessional conduct may have been committed.

(10) "Secretary" means the secretary of health or the secretary's designee.

(11) "Standards of practice" means the care, skill, and learning associated with the practice of a profession.

(12) "Unlicensed practice" means:

(a) Practicing a profession or operating a business identified in RCW 18.130.040 without holding a valid, unexpired, unrevoked, and unsuspended license to do so; or

(b) Representing to a consumer, through offerings, advertisements, or use of a professional title or designation, that the individual is qualified to practice a profession or operate a business identified in RCW 18.130.040, without holding a valid, unexpired, unrevoked, and unsuspended license to do so.

[2008 c 134 § 2; 1995 c 336 § 1; 1994 sp.s. c 9 § 602; 1989 1st ex.s. c 9 § 312; 1986 c 259 § 2; 1984 c 279 § 2.]

Notes:

Alphabetization -- 2008 c 134 § 2: "The code reviser is directed to put the defined terms in RCW 18.130.020 in alphabetical order." [2008 c 134 § 39.]

Finding -- Intent -- 2008 c 134: "From statehood, Washington has constitutionally provided for the regulation of the practice of medicine and the sale of drugs and medicines. This constitutional recognition of the importance of regulating health care practitioners derives not from providers' financial interest in their license, but from the greater need to protect the public health and safety by assuring that the health care providers and medicines that society relies upon meet certain standards of quality.

The legislature finds that the issuance of a license to practice as a health care provider should be a means to promote quality and not be a means to provide financial benefit for providers. Statutory and administrative requirements provide sufficient due process

Appellant's Brief
Appendix
Relevant Sections of RCW 18.130

protections to prevent the unwarranted revocation of a health care provider's license. While those due process protections must be maintained, there is an urgent need to return to the original constitutional mandate that patients be ensured quality from their health care providers. The legislature has recognized and medical malpractice reforms have recognized the importance of quality and patient safety through such measures as a new adverse events reporting system. Reforms to the health care provider licensing system is another step toward improving quality in health care. Therefore, the legislature intends to increase the authority of those engaged in the regulation of health care providers to swiftly identify and remove health care providers who pose a risk to the public." [2008 c 134 § 1.]

Severability -- 2008 c 134: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2008 c 134 § 38.]

Severability -- Headings and captions not law -- Effective date -- 1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

Effective date -- Severability -- 1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

Severability -- 1986 c 259: See note following RCW 18.130.010.

RCW 18.130.040

Application to certain professions — Authority of secretary — Grant or denial of licenses — Procedural rules. (*Effective until July 1, 2010.*)

(1) This chapter 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 does not apply to any business or profession not licensed under the chapters specified in this section.

(2)(a) The secretary has authority under this chapter in relation to the following professions:

Appellant's Brief

Appendix

Relevant Sections of RCW 18.130

- (i) Dispensing opticians licensed and designated apprentices under chapter 18.34 RCW;
- (ii) Naturopaths licensed under chapter 18.36A RCW;
- (iii) Midwives licensed under chapter 18.50 RCW;
- (iv) Ocularists licensed under chapter 18.55 RCW;
- (v) Massage operators and businesses licensed under chapter 18.108 RCW;
- (vi) Dental hygienists licensed under chapter 18.29 RCW;
- (vii) Acupuncturists licensed under chapter 18.06 RCW;
- (viii) Radiologic technologists certified and X-ray technicians registered under chapter 18.84 RCW;
- (ix) Respiratory care practitioners licensed under chapter 18.89 RCW;
- (x) Counselors, hypnotherapists, and agency affiliated counselors registered and advisors and counselors certified under chapter 18.19 RCW;
- (xi) Persons licensed as mental health counselors, mental health counselor associates, marriage and family therapists, marriage and family therapist associates, social workers, social work associates - - advanced, and social work associates -- independent clinical under chapter 18.225 RCW;
- (xii) Persons registered as nursing pool operators under chapter 18.52C RCW;
- (xiii) Nursing assistants registered or certified under chapter 18.88A RCW;
- (xiv) Health care assistants certified under chapter 18.135 RCW;

Appellant's Brief
Appendix
Relevant Sections of RCW 18.130

(xv) Dietitians and nutritionists certified under chapter 18.138 RCW;

(xvi) Chemical dependency professionals and chemical dependency professional trainees certified under chapter 18.205 RCW;

(xvii) Sex offender treatment providers and certified affiliate sex offender treatment providers certified under chapter 18.155 RCW;

(xviii) Persons licensed and certified under chapter 18.73 RCW or RCW 18.71.205;

(xix) Denturists licensed under chapter 18.30 RCW;

(xx) Orthotists and prosthetists licensed under chapter 18.200 RCW;

(xxi) Surgical technologists registered under chapter 18.215 RCW;

(xxii) Recreational therapists;

(xxiii) Animal massage practitioners certified under chapter 18.240 RCW;

(xxiv) Athletic trainers licensed under chapter 18.250 RCW;

(xxv) Home care aides certified under chapter 18.88B RCW; and

(xxvi) Speech-language pathology assistants certified under chapter 18.35 RCW.

(b) The boards and commissions having authority under this chapter are as follows:

(i) The podiatric medical board as established in chapter 18.22 RCW;

Appellant's Brief
Appendix
Relevant Sections of RCW 18.130

(ii) The chiropractic quality assurance commission as established in chapter 18.25 RCW;

(iii) The dental quality assurance commission as established in chapter 18.32 RCW governing licenses issued under chapter 18.32 RCW and licenses and registrations issued under chapter 18.260 RCW;

(iv) The board of hearing and speech as established in chapter 18.35 RCW;

(v) The board of examiners for nursing home administrators as established in chapter 18.52 RCW;

(vi) The optometry board as established in chapter 18.54 RCW governing licenses issued under chapter 18.53 RCW;

(vii) The board of osteopathic medicine and surgery as established in chapter 18.57 RCW governing licenses issued under chapters 18.57 and 18.57A RCW;

(viii) The board of pharmacy as established in chapter 18.64 RCW governing licenses issued under chapters 18.64 and 18.64A RCW;

(ix) The medical quality assurance commission as established in chapter 18.71 RCW governing licenses and registrations issued under chapters 18.71 and 18.71A RCW;

(x) The board of physical therapy as established in chapter 18.74 RCW;

(xi) The board of occupational therapy practice as established in chapter 18.59 RCW;

(xii) The nursing care quality assurance commission as established in chapter 18.79 RCW governing licenses and registrations issued under that chapter;

(xiii) The examining board of psychology and its disciplinary

Appellant's Brief
Appendix
Relevant Sections of RCW 18.130

committee as established in chapter 18.83 RCW; and

(xiv) The veterinary board of governors as established in chapter 18.92 RCW.

(3) In addition to the authority to discipline license holders, the disciplining authority has the authority to grant or deny licenses. The disciplining authority may also grant a license subject to conditions.

(4) All disciplining authorities shall adopt procedures to ensure substantially consistent application of this chapter, the Uniform Disciplinary Act, among the disciplining authorities listed in subsection (2) of this section.

[2009 c 301 § 8; 2009 c 52 § 1; 2009 c 2 § 16 (Initiative Measure No. 1029, approved November 4, 2008); 2008 c 134 § 18; (2008 c 134 § 17 expired July 1, 2008). Prior: 2007 c 269 § 17; 2007 c 253 § 13; 2007 c 70 § 11; 2004 c 38 § 2; prior: 2003 c 275 § 2; 2003 c 258 § 7; prior: 2002 c 223 § 6; 2002 c 216 § 11; 2001 c 251 § 27; 1999 c 335 § 10; 1998 c 243 § 16; prior: 1997 c 392 § 516; 1997 c 334 § 14; 1997 c 285 § 13; 1997 c 275 § 2; prior: 1996 c 200 § 32; 1996 c 81 § 5; prior: 1995 c 336 § 2; 1995 c 323 § 16; 1995 c 260 § 11; 1995 c 1 § 19 (Initiative Measure No. 607, approved November 8, 1994); prior: 1994 sp.s. c 9 § 603; 1994 c 17 § 19; 1993 c 367 § 4; 1992 c 128 § 6; 1990 c 3 § 810; prior: 1988 c 277 § 13; 1988 c 267 § 22; 1988 c 243 § 7; prior: 1987 c 512 § 22; 1987 c 447 § 18; 1987 c 415 § 17; 1987 c 412 § 15; 1987 c 150 § 1; prior: 1986 c 259 § 3; 1985 c 326 § 29; 1984 c 279 § 4.]

Notes:

Reviser's note: This section was amended by 2009 c 52 § 1 and by 2009 c 301 § 8, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Intent -- Implementation -- 2009 c 301: See notes following RCW 18.35.010.

Speech-language pathology assistants -- Certification requirements -- 2009 c 301: See note following RCW 18.35.040.

Effective date -- 2009 c 52 § 1: "Section 1 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the

Appellant's Brief

Appendix

Relevant Sections of RCW 18.130

state government and its existing public institutions, and takes effect July 1, 2009." [2009 c 52 § 3.]

Contingent effective date -- 2009 c 2 (Initiative Measure No. 1029) § 16: "Section 16 of this act takes effect if section 18, chapter 134, Laws of 2008 is signed into law by April 6, 2008." [2009 c 2 § 24 (Initiative Measure No. 1029, approved November 4, 2008).]

Intent -- Findings -- Construction -- Severability -- Short title -- 2009 c 2 (Initiative Measure No. 1029): See notes following RCW 18.88B.020.

Effective date -- 2008 c 134 § 18: "Section 18 of this act takes effect July 1, 2008." [2008 c 134 § 37.]

Expiration date -- 2008 c 134 § 17: "Section 17 of this act expires July 1, 2008." [2008 c 134 § 36.]

Finding -- Intent -- Severability -- 2008 c 134: See notes following RCW 18.130.020.

Application -- Implementation -- 2007 c 269: See RCW 18.260.900 and 18.260.901.

Severability -- Effective date -- Implementation -- 2007 c 253: See RCW 18.250.900 through 18.250.902.

Effective date -- 2004 c 38: See note following RCW 18.155.075.

Effective date -- 2003 c 275 § 2: "Section 2 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2003." [2003 c 275 § 4.]

Severability -- Effective date -- 2003 c 258: See notes following RCW 18.79.330.

Severability -- Effective date -- 2002 c 216: See RCW 18.230.900 and 18.230.901.

Severability -- 2001 c 251: See RCW 18.225.900.

Effective dates -- 1998 c 243: See RCW 18.205.900.

Short title--Findings -- Construction--Conflict with federal requirements--

Appellant's Brief
Appendix
Relevant Sections of RCW 18.130

Part headings and captions not law--1997 c 392: See notes following RCW 74.39A.009.

Effective dates -- 1997 c 334: See note following RCW 18.89.010.

Intent -- Purpose--1997 c 285: See RCW 18.200.005.

Severability -- 1997 c 285: See RCW 18.200.901.

Severability -- 1996 c 200: See RCW 18.35.902.

Effective date -- 1996 c 81: See note following RCW 70.128.120.

Effective date -- 1995 c 336 §§ 2 and 3: "Sections 2 and 3 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 11, 1995]." [1995 c 336 § 11.]

Effective date -- 1995 c 260 §§ 7-11: "Sections 7 through 11 of this act shall take effect July 1, 1996." [1995 1st sp.s. c 18 § 116; 1995 c 260 § 12.]

Short title -- Severability -- 1995 c 1 (Initiative Measure No. 607): See RCW 18.30.900 and 18.30.901.

Severability -- Headings and captions not law -- Effective date -- 1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

Index, part headings not law -- Severability -- Effective dates -- Application -- 1990 c 3: See RCW 18.155.900 through 18.155.902.

Severability -- 1987 c 512: See RCW 18.19.901.

Severability -- 1987 c 447: See RCW 18.36A.901.

Severability -- 1987 c 415: See RCW 18.89.901.

Effective date -- Severability -- 1987 c 412: See RCW 18.84.901 and 18.84.902.

Severability -- 1987 c 150: See RCW 18.122.901.

Severability -- 1986 c 259: See note following RCW 18.130.010.

Appellant's Brief
Appendix
Relevant Sections of RCW 18.130

RCW 18.130.050

Authority of disciplining authority.

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

- (1) To adopt, amend, and rescind such rules as are deemed necessary to carry out this chapter;
- (2) To investigate all complaints or reports of unprofessional conduct as defined in this chapter;
- (3) To hold hearings as provided in this chapter;
- (4) To issue subpoenas and administer oaths in connection with any investigation, consideration of an application for license, hearing, or proceeding held under this chapter;
- (5) To take or cause depositions to be taken and use other discovery procedures as needed in any investigation, hearing, or proceeding held under this chapter;
- (6) To compel attendance of witnesses at hearings;
- (7) In the course of investigating a complaint or report of unprofessional conduct, to conduct practice reviews and to issue citations and assess fines for failure to produce documents, records, or other items in accordance with RCW 18.130.230;
- (8) To take emergency action ordering summary suspension of a license, or restriction or limitation of the license holder's practice pending proceedings by the disciplining authority. Within fourteen days of a request by the affected license holder, the disciplining authority must provide a show cause hearing in accordance with the requirements of RCW 18.130.135. Consistent with RCW 18.130.370, a disciplining authority shall issue a summary suspension of the license or temporary practice permit of a license holder prohibited from practicing a health care profession in another state, federal, or foreign jurisdiction because of an act of unprofessional conduct that is substantially equivalent to an act of

Appellant's Brief

Appendix

Relevant Sections of RCW 18.130

unprofessional conduct prohibited by this chapter or any of the chapters specified in RCW 18.130.040. The summary suspension remains in effect until proceedings by the Washington disciplining authority have been completed;

(9) To conduct show cause hearings in accordance with RCW 18.130.062 or 18.130.135 to review an action taken by the disciplining authority to suspend a license or restrict or limit a license holder's practice pending proceedings by the disciplining authority;

(10) To use a presiding officer as authorized in RCW 18.130.095(3) or the office of administrative hearings as authorized in chapter 34.12 RCW to conduct hearings. The disciplining authority shall make the final decision regarding disposition of the license unless the disciplining authority elects to delegate in writing the final decision to the presiding officer. Disciplining authorities identified in RCW 18.130.040(2)(b) may not delegate the final decision regarding disposition of the license or imposition of sanctions to a presiding officer in any case pertaining to standards of practice or where clinical expertise is necessary;

(11) To use individual members of the boards to direct investigations and to authorize the issuance of a citation under subsection (7) of this section. However, the member of the board shall not subsequently participate in the hearing of the case;

(12) To enter into contracts for professional services determined to be necessary for adequate enforcement of this chapter;

(13) To contract with license holders or other persons or organizations to provide services necessary for the monitoring and supervision of license holders who are placed on probation, whose professional activities are restricted, or who are for any authorized purpose subject to monitoring by the disciplining authority;

(14) To adopt standards of professional conduct or practice;

(15) To grant or deny license applications, and in the event of a finding of unprofessional conduct by an applicant or license holder,

Appellant's Brief
Appendix
Relevant Sections of RCW 18.130

to impose any sanction against a license applicant or license holder provided by this chapter. After January 1, 2009, all sanctions must be issued in accordance with RCW 18.130.390;

(16) To restrict or place conditions on the practice of new licensees in order to protect the public and promote the safety of and confidence in the health care system;

(17) To designate individuals authorized to sign subpoenas and statements of charges;

(18) To establish panels consisting of three or more members of the board to perform any duty or authority within the board's jurisdiction under this chapter;

(19) To review and audit the records of licensed health facilities' or services' quality assurance committee decisions in which a license holder's practice privilege or employment is terminated or restricted. Each health facility or service shall produce and make accessible to the disciplining authority the appropriate records and otherwise facilitate the review and audit. Information so gained shall not be subject to discovery or introduction into evidence in any civil action pursuant to RCW 70.41.200(3).

[2008 c 134 § 3; 2006 c 99 § 4; 1995 c 336 § 4. Prior: 1993 c 367 § 21; 1993 c 367 § 5; 1987 c 150 § 2; 1984 c 279 § 5.]

Notes:

Finding -- Intent -- Severability -- 2008 c 134: See notes following RCW 18.130.020.

Severability -- 1987 c 150: See RCW 18.122.901.

RCW 18.130.060

Additional authority of secretary.

In addition to the authority specified in RCW 18.130.050 and 18.130.062, the secretary has the following additional authority:

(1) To employ such investigative, administrative, and clerical staff as necessary for the enforcement of this chapter. The secretary must, whenever practical, make primary assignments on a long-term basis to foster the development and maintenance of

Appellant's Brief
Appendix

Relevant Sections of RCW 18.130

staff expertise. To ensure continuity and best practices, the secretary will regularly evaluate staff assignments and workload distribution;

(2) Upon the request of a board or commission, to appoint pro tem members to participate as members of a panel of the board or commission in connection with proceedings specifically identified in the request. Individuals so appointed must meet the same minimum qualifications as regular members of the board or commission. Pro tem members appointed for matters under this chapter are appointed for a term of no more than one year. No pro tem member may serve more than four one-year terms. While serving as board or commission members pro tem, persons so appointed have all the powers, duties, and immunities, and are entitled to the emoluments, including travel expenses in accordance with RCW 43.03.050 and 43.03.060, of regular members of the board or commission. The chairperson of a panel shall be a regular member of the board or commission appointed by the board or commission chairperson. Panels have authority to act as directed by the board or commission with respect to all matters subject to the jurisdiction of the board or commission and within the authority of the board or commission. The authority to act through panels does not restrict the authority of the board or commission to act as a single body at any phase of proceedings within the board's or commission's jurisdiction. Board or commission panels may issue final orders and decisions with respect to matters and cases delegated to the panel by the board or commission. Final decisions may be appealed as provided in chapter 34.05 RCW, the administrative procedure act;

(3) To establish fees to be paid for witnesses, expert witnesses, and consultants used in any investigation and to establish fees to witnesses in any agency adjudicative proceeding as authorized by RCW 34.05.446;

(4) To conduct investigations and practice reviews at the direction of the disciplining authority and to issue subpoenas, administer oaths, and take depositions in the course of conducting those investigations and practice reviews at the direction of the disciplining authority;

Appellant's Brief
Appendix
Relevant Sections of RCW 18.130

(5) To have the health professions regulatory program establish a system to recruit potential public members, to review the qualifications of such potential members, and to provide orientation to those public members appointed pursuant to law by the governor or the secretary to the boards and commissions specified in RCW 18.130.040(2)(b), and to the advisory committees and councils for professions specified in RCW 18.130.040(2)(a); and

(6) To adopt rules, in consultation with the disciplining authorities, requiring every license holder to report information identified in RCW 18.130.070.

[2008 c 134 § 4; 2006 c 99 § 1; 2001 c 101 § 1; 1995 c 336 § 5; 1991 c 3 § 269; 1989 c 175 § 68; 1987 c 150 § 3; 1984 c 279 § 6.]

Notes:

Finding -- Intent -- Severability -- 2008 c 134: See notes following RCW 18.130.020.

Effective date -- 1989 c 175: See note following RCW 34.05.010.

Severability -- 1987 c 150: See RCW 18.122.901.

RCW 18.130.062

Authority of secretary — Disciplinary process — Sexual misconduct.

With regard to complaints that only allege that a license holder has committed an act or acts of unprofessional conduct involving sexual misconduct, the secretary shall serve as the sole disciplining authority in every aspect of the disciplinary process, including initiating investigations, investigating, determining the disposition of the complaint, holding hearings, preparing findings of fact, issuing orders or dismissals of charges as provided in RCW 18.130.110, entering into stipulations permitted by RCW 18.130.172, or issuing summary suspensions under RCW 18.130.135. The board or commission shall review all cases and only refer to the secretary sexual misconduct cases that do not involve clinical expertise or standard of care issues.

[2008 c 134 § 5.]

Notes:

Finding -- Intent -- Severability -- 2008 c 134: See notes following RCW

Appellant's Brief
Appendix
Relevant Sections of RCW 18.130

18.130.020.
RCW 18.130.095

Uniform procedural rules.

(1)(a) The secretary, in consultation with the disciplining authorities, shall develop uniform procedural rules to respond to public inquiries concerning complaints and their disposition, active investigations, statement of charges, findings of fact, and final orders involving a license holder, applicant, or unlicensed person. The uniform procedural rules adopted under this subsection apply to all adjudicative proceedings conducted under this chapter and shall include provisions for establishing time periods for initial assessment, investigation, charging, discovery, settlement, and adjudication of complaints, and shall include enforcement provisions for violations of the specific time periods by the department, the disciplining authority, and the respondent. A license holder must be notified upon receipt of a complaint, except when the notification would impede an effective investigation. At the earliest point of time the license holder must be allowed to submit a written statement about that complaint, which statement must be included in the file. Complaints filed after July 27, 1997, are exempt from public disclosure under chapter 42.56 RCW until the complaint has been initially assessed and determined to warrant an investigation by the disciplining authority. Complaints determined not to warrant an investigation by the disciplining authority are no longer considered complaints, but must remain in the records and tracking system of the department. Information about complaints that did not warrant an investigation, including the existence of the complaint, may be released only upon receipt of a written public disclosure request or pursuant to an interagency agreement as provided in (b) of this subsection. Complaints determined to warrant no cause for action after investigation are subject to public disclosure, must include an explanation of the determination to close the complaint, and must remain in the records and tracking system of the department.

(b) The secretary, on behalf of the disciplining authorities, shall enter into interagency agreements for the exchange of records, which may include complaints filed but not yet assessed, with other state agencies if access to the records will assist those agencies in

Appellant's Brief
Appendix
Relevant Sections of RCW 18.130

meeting their federal or state statutory responsibilities. Records obtained by state agencies under the interagency agreements are subject to the limitations on disclosure contained in (a) of this subsection.

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

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

(b) From a witness or potential witness in an investigation under this chapter, the investigator shall inform the person, in writing, that the statement may be released to the license holder, applicant, or unlicensed person under investigation if a statement of charges is issued.

(3) Only upon the authorization of a disciplining authority identified in RCW 18.130.040(2)(b), 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 or make any final decision in cases pertaining to standards of practice or where clinical expertise is necessary. All functions performed by the presiding officer shall be subject to chapter 34.05 RCW. The secretary, in consultation with the disciplining authorities, shall adopt procedures for implementing this subsection.

(4) The uniform procedural rules shall be adopted by all disciplining authorities listed in RCW 18.130.040(2), and shall be used for all adjudicative proceedings conducted under this chapter, as defined by chapter 34.05 RCW. The uniform procedural rules shall address the use of a presiding officer authorized in subsection (3) of this section to determine and issue decisions on all legal issues and motions arising during adjudicative proceedings.

Appellant's Brief
Appendix
Relevant Sections of RCW 18.130

[2008 c 134 § 9; 2005 c 274 § 231; 1997 c 270 § 1; 1995 c 336 § 6; 1993 c 367 § 2.]

Notes:

Finding -- Intent -- Severability -- 2008 c 134: See notes following RCW 18.130.020.

Part headings not law -- Effective date--2005 c 274: See RCW 42.56.901 and 42.56.902.

RCW 18.130.190

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

(1) The secretary shall investigate complaints concerning practice by unlicensed persons of a profession or business for which a license is required by the chapters specified in RCW 18.130.040. In the investigation of the complaints, the secretary shall have the same authority as provided the secretary under RCW 18.130.050.

(2) 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. The person to whom such notice is issued may request an adjudicative proceeding to contest the charges. The request for hearing must be filed within twenty days after service of the notice of intention to issue a cease and desist order. The failure to request a hearing constitutes a default, whereupon the secretary may enter a permanent cease and desist order, which may include a civil fine. All proceedings shall be conducted in accordance with chapter 34.05 RCW.

(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

Appellant's Brief

Appendix

Relevant Sections of RCW 18.130

account.

(4) If the secretary makes a written finding of fact that the public interest will be irreparably harmed by delay in issuing an order, the secretary may issue a temporary cease and desist order. The person receiving a temporary cease and desist order shall be provided an opportunity for a prompt hearing. The temporary cease and desist order shall remain in effect until further order of the secretary. The failure to request a prompt or regularly scheduled hearing constitutes a default, whereupon the secretary may enter a permanent cease and desist order, which may include a civil fine.

(5) Neither the issuance of a cease and desist order nor payment of a civil fine shall relieve the person so practicing or operating a business without a license from criminal prosecution therefor, but the remedy of a cease and desist order or civil fine shall be in addition to any criminal liability. The cease and desist order is conclusive proof of unlicensed practice and may be enforced under RCW 7.21.060. This method of enforcement of the cease and desist order or civil fine may be used in addition to, or as an alternative to, any provisions for enforcement of agency orders set out in chapter 34.05 RCW.

(6) The attorney general, a county prosecuting attorney, the 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 therefor, but the remedy by injunction shall be in addition to any criminal liability.

(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.

Appellant's Brief
Appendix
Relevant Sections of RCW 18.130

(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.

(8) 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.

[2003 c 53 § 141; 2001 c 207 § 2. Prior: 1995 c 285 § 35; 1993 c 367 § 19; 1991 c 3 § 271; prior: 1989 c 373 § 20; 1989 c 175 § 71; 1987 c 150 § 7; 1986 c 259 § 11; 1984 c 279 § 19.]

Notes:

Intent -- Effective date -- 2003 c 53: See notes following RCW 2.48.180.

Purpose -- 2001 c 207: "The purpose of this act is to respond to *State v. Thomas*, 103 Wn. App. 800, by reenacting and ranking, without changes, legislation relating to the crime of unlicensed practice of a profession or a business, enacted as section 35, chapter 285, Laws of 1995." [2001 c 207 § 1.]

Effective date -- 2001 c 207: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 7, 2001]." [2001 c 207 § 4.]

Effective date -- 1995 c 285: See RCW 48.30A.900.

Severability -- 1989 c 373: See RCW 7.21.900.

Effective date -- 1989 c 175: See note following RCW 34.05.010.

Severability -- 1987 c 150: See RCW 18.122.901.

Severability -- 1986 c 259: See note following RCW 18.130.010.

Appellant's Brief
Appendix
Relevant Sections of RCW 18.130

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COURT OF APPEALS, DIVISION II, STATE OF WASHINGTON

DAVID STANZAK, APPELLANT,) NO.: 39681-5-II
)
v.)
) DECLARATION OF SERVICE
)
STATE OF WASHINGTON, DEPARTMENT)
OF HEALTH, et al., RESPONDENTS)
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I, DONNA L. BEATTY, counsel for Appellant David Stanzak, do hereby declare, under penalty of perjury:

On December 18, 2009, I mailed a copy of the foregoing Appellant's Opening Brief to Counsel for Defendant/Respondent, Gail S. Yu, Assistant Attorney General to the following address:

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Dated this 18th day of December, 2009



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DECLARATION OF SERVICE - 1

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