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**SUPREME COURT OF THE STATE OF WASHINGTON**

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MICHAEL S. JONES R.Ph.,

Petitioner,

v.

STATE OF WASHINGTON AND ITS DEPARTMENT OF HEALTH,  
WASHINGTON STATE BOARD OF PHARMACY; PHYLLIS WENE;  
and STAN JEPPESEN, individually and as investigators for the  
Washington State Board of Pharmacy, and DONALD WILLIAMS,  
individually and as executive director of the Board of Pharmacy,

Respondents.

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**RESPONDENTS' SUPPLEMENTAL BRIEF**

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## I. STATEMENT OF FACTS

As authorized by RCW 18.130.050 and RCW 34.05.479, on August 17, 1999 the Washington State Pharmacy Board summarily suspended the professional licenses of pharmacist Michael Jones, who owned and operated a franchise Medicine Shoppe pharmacy in Marysville, after he received unsatisfactory scores at two inspections performed by Pharmacy Investigators Phyllis Wene and Stan Jeppesen. CP 267-73, 280, 287 – 89. Jones, who had failed an inspection previously in 1998, knew from his prior experience that the investigators would re-inspect his pharmacy following his initial July 12, 1999 unsatisfactory inspection.<sup>1</sup> Although Jones had previously managed to bring his pharmacy into compliance by the time of the required re-inspection, this time Jones failed to do so by the investigators' August 10, 1999 re-inspection. CP 273, 287 – 89. Thus, on August 16, 1999, Pharmacy Board Executive Director Donald Williams filed an ex parte motion for summary suspension, as well as a Statement of Charges against Jones. CP 273, 291 – 318. The following day, the Board granted Williams' motion, and Jones was served with the Board's order. CP 274, 319 – 26, 334 – 36.

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<sup>1</sup> When a pharmacy receives an unsatisfactory (below 80) score at an inspection, WAC 246-869-190 requires that the pharmacy raise its score to satisfactory (90 or better) within fourteen (14) days. Thus, in December 1998 Jones' pharmacy received an unsatisfactory score at an inspection, but he corrected enough deficiencies to raise his score to satisfactory by the re-inspection in February 1999. CP 212 – 13.

Any pharmacist who is affected by a summary action has the right to demand a prompt hearing, which must occur within twenty (20) days of the summary action. The pharmacist must exercise this right within ten (10) days of being served with the order of summary action. WAC 246-11-340. Jones never exercised his right to a prompt hearing.

Instead, Jones filed a motion to stay the summary suspension and expressly waived his right to a prompt hearing.<sup>2</sup> CP 337 – 38, 397 - 403. Jones and his attorney submitted declarations to the Board, acknowledging many of the violations supporting the summary action, but claiming that these problems had either been corrected or else did not pose a risk to public safety. CP 340 – 52. These declarations established:

- Jones had been unable to locate or reconcile inventory records of Schedule II controlled substances and required DEA forms. CP 343 – 44, 214 – 15.
- Jones could not show patient authorizations for the high number of non-child resistant containers he was using. CP 342, 349.
- Prescription items that were noted at the July 1999 inspection as showing incorrect National Drug Code (NDC) numbers at the July 1999 inspection were still on his shelves at the August 1999 re-inspection. CP 349.
- Outdated prescription items that had “slipped through the cracks” were still on Jones’ shelves at the August 1999 re-inspection. CP 343, 350.

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<sup>2</sup> A copy of Jones’ August 27, 1999 Answer to the Statement of Charges, in which he waived his right to a prompt hearing, is attached as Appendix A.

- The feature of Jones' automated patient records system that detects for potentially fatal adverse drug interactions and allergic reactions of patients was turned off. CP 274, 341.
- At the inspections, Jones had been unable to use his automated patient records system to construct an audit trail. CP 344.

On August 30, 1999, a three-member panel of the Board denied Jones' motion to stay the summary suspension, reasoning that Jones had "a history of committing violations of the pharmacy law, correcting the violations, but then violating the laws again," and concluding that "the concerns for the protection of the public outweigh[ed his] assertions that the violations have been corrected."<sup>3</sup> CP 357.

Next, on September 13, 1999 Jones filed a motion for an expedited hearing, even though he had expressly waived his right to a prompt hearing just seventeen (17) days before. CP 706. Nevertheless, a Health Law Judge granted Jones' motion and set the hearing for October, 21 1999, the next available hearing date. CP 710 – 713. Later, the hearing date was continued to December 2, 1999 to permit the State to amend the Statement of Charges. CP 714 – 717. Finding good cause for this brief continuance, the Health Law Judge noted that Jones had waived his right to a prompt hearing and that his case was still "being handled expeditiously and made a priority matter." CP 717.

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<sup>3</sup> A copy of the Board's order denying the motion to stay the summary suspension is attached as Appendix B.

Jones never availed himself of the hearing. On January 11, 2000, he and his attorney signed a stipulated order, agreeing to the suspension of his pharmacist's license with stay and revocation of the pharmacy location license without stay for a period of five years, in addition to other conditions and restrictions.<sup>4</sup> CP 412 – 31. Based on Jones' stipulation, the Board found that he had engaged in unprofessional conduct, operated his pharmacy in a manner below the standard of care, and placed his patients at serious risk of significant harm. CP 420, 423. As mandated by RCW 18.130.160, in the stipulated order Jones expressly agreed to "assume all costs of complying with [the] Order." CP 424. Jones never appealed the Board's order to the Superior Court, as permitted by RCW 18.130.200.

Later, Jones filed this lawsuit asserting a claim under 42 U.S.C. § 1983 for denial of procedural due process, as well as claims for negligence, recklessness, tortious interference with a business expectancy, and injunctive relief. CP 470 – 77, 505 – 21. Jones' § 1983 claims, which sought damages, were asserted only against Williams, Wene, and Jeppesen in their individual capacities. CP 474. Jones' claim for injunctive relief was asserted against the State only. CP 476. Jones' other state law tort claims were asserted against all defendants. CP 474 – 76.

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<sup>4</sup> A copy of the stipulated final order of the Board is attached as Appendix C.

The defendants moved for summary judgment on multiple grounds. CP at 432-58. Based on Jones' concessions, the trial court dismissed all Jones' claims except for his § 1983 claims and his claims for negligent supervision and tortious interference. CP 22 – 24, 128 – 31, 179-210, 223-27. On discretionary review, the Court of Appeals reversed the trial court's partial denial of summary judgment, holding that (1) Williams was entitled to absolute prosecutorial immunity on all claims, (2) Williams, Wene, and Jeppesen were entitled to qualified immunity on Jones' § 1983 claims, and (3) Jones' negligent supervision and tortious interference claims were barred by his stipulation to the Board's agreed order and failure to exhaust administrative remedies. *Jones v. State*, 140 Wn. App. 476, 480, 166 P.3d 1219 (2007). Jones now asks this Court to reverse the Court of Appeals and reinstate these three claims.

## II. ARGUMENT

### A. **The Court of Appeals Correctly Held that Jones' 42 U.S.C. § 1983 Procedural Due Process Claims are Barred by Absolute and Qualified Immunity**

Jones' procedural due process § 1983 claim, which is based on the lack of a pre-deprivation hearing when his licenses were summarily suspended, was asserted only against Williams, Wene, and Jeppesen in their individual capacities. CP 474. However, given that Jones has not challenged the Court of Appeals' holding that Williams is entitled to

absolute quasi-prosecutorial immunity<sup>5</sup>, he must now intend to pursue his § 1983 claims against Investigators Wene and Jeppesen only. Wene and Jeppesen's investigative conduct does not give rise to a procedural due process violation. Moreover, given Jones' admissions to numerous serious health and safety violations, invoking the summary suspension procedure authorized by RCW 18.130.050 and RCW 34.05.479 was objectively reasonable. Thus, the Court of Appeals' holding that all three individual defendants are immune should be affirmed.

Once a defendant in a § 1983 case has raised qualified immunity, the plaintiff bears the burden of showing the defendant's conduct violated a clearly established constitutional right. *Robinson v. City of Seattle*, 119 Wn.2d 34, 65-66, 830 P.2d 318 (1992). Where an official's conduct is objectively reasonable when measured against the clearly established law, the official is entitled to qualified immunity. *Id.* at 65.

Jones cannot maintain a procedural due process claim against Wene and Jeppesen where their conduct was limited to completing

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<sup>5</sup> The Court of Appeals correctly held that Williams, an agency official responsible for initiating and prosecuting the disciplinary action against Jones, was entitled to absolute prosecutorial immunity. *See, e.g., Hannum v. Friedt*, 88 Wn. App. 881, 947 P.2d 760 (1997); *Olsen v. Idaho State Bd. Of Medicine*, 363 F.3d 916 (9<sup>th</sup> Cir. 2004); *Mischler v. Nevada State Bd. Of Medical Examiners*, 191 F.3d 998, 1008 (9<sup>th</sup> Cir. 1999). This absolute immunity extends to the State as Williams' employer. *Dutton v. Washington Physicians Health Program*, 87 Wn. App. 614, 619, 943 P.2d 298 (1997). While Jones argued below that Williams was not entitled to absolute prosecutorial immunity, he did not challenge Williams' absolute immunity in his Petition for this Court's review.

inspection reports. As the Court of Appeals in *Hannum* held, an investigator's conduct does not give rise to a § 1983 procedural due process claim where the focus of the claim is the plaintiff's loss of a license. *Hannum*, 88 Wn. App. at 890 – 91. As investigators, Wene and Jeppesen did not deprive Jones of his license. Williams, not Wene or Jeppesen, initiated the summary action. CP 273. Thus, Wene and Jeppesen committed no procedural due process violation.

Even assuming that Wene and Jeppesen's conduct implicated Jones' procedural due process rights, a pre-deprivation hearing was not required under the facts of this case. In *Hodel v. Virginia Surface Mining & Reclamation Assoc.*, 452 U.S. 264, 101 S. Ct. 2352, 69 L. Ed. 2d 1 (1981), the Supreme Court recognized that summary action is appropriate in emergency situations where there is a risk to public safety. *Id.* at 300. Federal appellate courts, such as the Second Circuit, have held that *Hodel* requires that courts give substantial deference to officials who invoke such emergency procedures:

[W]here there is competent evidence allowing the official to reasonably believe that an emergency does in fact exist, or that affording pre-deprivation process would be otherwise impractical, the discretionary invocation of an emergency procedure results in a constitutional violation only where such invocation is arbitrary or amounts to an abuse of discretion.

*Cantanzaro v. Weiden*, 188 F.3d 56, 62 (2d Cir. 1999). The Ninth and Sixth Circuits have adopted a similar analysis. *Id.* at 62 – 63 (citing *Armendariz v. Penman*, 31 F.3d 860, 866 (9<sup>th</sup> Cir. 1994), vacated in part on other grounds, 75 F.3d 1311 (9<sup>th</sup> Cir. 1996) (en banc) and *Harris v. City of Akron*, 20 F.3d 1396, 1404 – 05 (6<sup>th</sup> Cir. 1994)).

Here, Jones admitted to numerous significant health and safety violations in declarations he submitted to the Pharmacy Board. *Jones*, 140 Wn. App. at 491 – 92.<sup>6</sup> The Court of Appeals noted that conduct similar to Jones’ has caused significant injuries to pharmacy patients and has even subjected pharmacists to prosecution. *Id.* at 492, fn. 26 (citing cases). At a minimum, competent evidence existed to support the summary action.

Previously, Jones argued that the delay between the time of the inspections and the filing of the State’s motion for a summary suspension gave rise to a question of fact that precluded a finding of qualified immunity. However, the deferential standard discussed in *Cantanzaro* prohibits precisely this type of hindsight second-guessing:

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<sup>6</sup> See pp. 10 – 17 of the State’s Opening Brief filed in the Court of Appeals for a discussion of the specific health and safety violations admitted by Jones. In the trial court, the State argued that Jones was judicially estopped from contradicting his earlier declarations before the Pharmacy Board in order to create a sham issue of fact. CP 149 - 153. The Court of Appeals incorrectly stated in its opinion that the State did not raise this issue in the trial court. *Jones*, 140 Wn. App. at 495, fn. 32. However, ultimately the Court agreed that the reasonableness of summary action had to be judged in light of Jones’ admissions to the Board in his 1999 declarations. *Id.* at 492.

This somewhat deferential standard finds strong support in policy considerations. The law should not discourage officials from taking prompt action to insure the public safety. By subjecting a decision to invoke an emergency procedure to an exacting hindsight analysis, where every mistake, even if made in good faith, becomes a constitutional violation, we encourage delay and thereby potentially increase the public's exposure to dangerous conditions. This quandary is exactly what these emergency procedures are designed to prevent, and is the primary reason they are constitutionally acceptable.

If an official believes that the public is in immediate danger, he or she should not hesitate to invoke an emergency procedure for fear of being sued, and being liable for damages should his or her decision turn out to be incorrect in hindsight. If procedural due process violations were to be as broadly defined as Plaintiffs-Appellants would define them, in order to avoid the possibility of committing any constitutional violation, an official charged with discretion would be in the anomalous position of almost being forced to hold a hearing to determine whether or not an emergency exists, so as to then determine whether a predeprivation hearing is constitutionally required. This cannot be the proper result.

*Cantanzaro*, 188 F.3d at 63. Furthermore, it is undisputed that Williams decided when to seek summary action, not Wene or Jeppesen. CP 273. Again, Jones has not challenged Williams' absolute immunity, and Wene and Jeppesen cannot be held liable for Williams' discretionary decision to seek a summary suspension on August 16, 1999 rather than earlier.

**B. The Court of Appeals Correctly Held Jones' State Law Tort Claims Are Barred By His Failure to Exhaust Administrative Remedies and Stipulation to the Board's Final Order**

The Court of Appeals correctly held that Jones' tortious interference and negligent supervision claims, which focus on the alleged wrongful suspension of his licenses, are barred by his failure to exhaust administrative remedies. This Court has long recognized that before seeking relief from the courts with respect to an agency's action, a litigant must exhaust the agency's administrative remedies:

Generally, if an administrative proceeding can alleviate the harmful consequences of a governmental activity at issue, a litigant must first pursue that remedy before the courts will intervene. The doctrine applies in cases where a claim is originally cognizable by an agency which has clearly defined mechanisms for resolving complaints by aggrieved parties and the administrative remedies can provide the relief sought.

*Smoke v. City of Seattle*, 132 Wn.2d 214, 223 – 24, 937 P.2d 186 (1997) (citations omitted). The exhaustion doctrine gives proper deference to agency officials who have expertise in areas outside the conventional experience of judges<sup>7</sup>, permits agencies to develop the necessary factual background on which to reach a final decision and to correct their own errors, and avoids unnecessary court intervention. *South Hollywood Hills Citizens Ass'n for Preservation of Neighborhood Safety and Envir't v. King County* 101 Wn.2d 68, 73 – 74, 677 P.2d 114 (1984). Both this Court and the Court of Appeals have extended the exhaustion doctrine to tort actions.

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<sup>7</sup> Given that it is comprised mostly of pharmacists, during adjudicative proceedings the Board is permitted to "use its expertise and specialized knowledge to evaluate and draw inferences from the evidence presented to it." WAC 246-11-160.

*See, e.g., Rains v. Dept. of Fisheries*, 89 Wn.2d 740, 743 – 44, 575 P.2d 1057 (1978); *Laymon v. Wash. Dep't. of Natural Resources*, 99 Wn. App. 518, 528, 994 P.2d 232 (2000); *Reninger v. Dept. of Corrections*, 79 Wn. App. 623, 901 P.2d 325 (1995), affirmed on other grounds, 134 Wn.2d 437, 951 P.2d 782 (1998); *Dils v. Dept. of Labor & Industries*, 51 Wn. App. 216, 220 – 21, 752 P.2d 1357 (1988).

**1. Exhaustion is Required by the Uniform Disciplinary Act**

Where a statute creates an extensive regulatory framework that is specifically designed to address the plaintiff's complaints, both this Court and the Court of Appeals have previously recognized a legislative intent that the plaintiff exhaust administrative remedies. In *Rains*, the plaintiff sued for damage caused by the overflow of a creek on his property after the State had denied his application for a permit to re-channel the creek. *Rains*, 89 Wn.2d at 741 – 42. The plaintiff never demanded a hearing that was available under the Administrative Procedures Act (APA). *Id.* at 742. This Court affirmed dismissal of the claim based on the legislative intent as reflected by the APA and RCW 4.92.090<sup>8</sup>:

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<sup>8</sup> RCW 4.92.090 provides, "The State of Washington, whether acting in its governmental or proprietary capacity, shall be liable for damages arising out of its tortious conduct to the same extent as if were a private person or corporation." In *Rains*, because this Court affirmed based on the plaintiff's failure to exhaust, it did not reach the issue of whether a license or permitting decision was a non-actionable discretionary act.

[W]e hold it to be the policy of this state that the administrative procedures for a hearing must be invoked or attempted to be invoked before liability in tort may be charged to the state for failure to issue a license or permit. ....

We find rationale for such policy determination in the fact that the legislature set up the procedure between agencies and applicants. Such legislative scheme for an administrative hearing implies that any other remedy is precluded, absent such hearing, ....

*Id.* at 743 – 44; *See also Reninger*, 79 Wn. App. 631 – 32 (holding that Civil Service Act’s extensive remedial scheme evidenced legislative intent that administrative remedies be exhausted before State employee could seek tort relief against State in Superior Court).

This Court should similarly hold that Legislature intended that pharmacists use administrative procedures prior to seeking tort remedies against the Board or its employees. The Uniform Disciplinary Act (UDA)<sup>9</sup>, which governed the adjudication of Jones’ license suspension, provides:

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.

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*Rains*, 89 Wn.2d at 743 (citing *Evangelical United Brethren Church v. State*, 67 Wn.2d 246, 407 P.2d 440 (1965)).

<sup>9</sup> Some portions of the UDA have been amended since 1999. A copy of the provisions of the UDA that were in effect in 1999 is attached as Appendix D.

RCW 18.130.010. The UDA incorporates the hearing procedures of the APA and provides a vehicle and forum created specifically to resolve complaints related to the licensure of health care professionals quickly and inexpensively. The UDA permits the Board to resolve disciplinary action either by entering an order following a hearing or, as here, entering an order after the parties reach a stipulation. RCW 18.130.160. However, the UDA specifically provides that whenever the Board enters an order finding unprofessional conduct and imposing disciplinary sanctions, the license holder must assume all costs of complying with the order:

All costs associated with compliance with orders issued under this section are the obligation of the license holder or applicant.

RCW 18.130.160.

A pharmacist may appeal an order by the Board to the Superior Court by filing a Petition for Review within thirty days. RCW 18.64.200; RCW 34.05.542. In an APA review proceeding, the Superior Court is authorized to both overturn the agency's action and to award damages, compensation, or ancillary relief to the extent expressly authorized by another provision of the law. RCW 34.05.574.

This Court should follow the reasoning of *Rains* and *Reninger* and hold that the UDA's extensive framework reflects a legislative intent that pharmacists must exhaust the Board's administrative remedies before

seeking other remedies in court. Jones' state law tort claims all stem from the suspension of his professional licenses, and the hearing process established by the UDA could have afforded him timely and effective relief. Furthermore, in RCW 18.130.160 the Legislature specifically requires that pharmacists bear all costs associated with complying with any Board order imposing disciplinary sanctions. Thus, when disciplinary sanctions were imposed, Jones' only recourse was to appeal the order to the Superior Court in accordance with RCW 18.64.200, where he could seek reversal of the Board's order and, had he prevailed, any other relief authorized by law. Jones cannot now seek to recoup the costs of compliance with the order by asserting tort claims in this collateral lawsuit. His stipulation to the suspensions and failure to exhaust the Board's administrative remedies bars his state law tort claims.

## **2. Exhaustion of the Board's Remedies Was Not Futile**

In the Court of Appeals, Jones argued that the exhaustion doctrine should not bar his claims, because doing so would have been futile. In rare cases, futility will excuse the exhaustion requirement. *Orion Corp. v. State*, 103 Wn.2d 441, 458, 693 P.2d 1369 (1985). "The futility exception to the exhaustion doctrine is premised upon the rationale that courts will not require vain and useless acts." *Id.* Even remedies thought by the plaintiff to be unavailing should be pursued. *Dils*, 51 Wn. App. at 219.

Chiefly, Jones' argument is based on the delay he experienced in securing a hearing before the Board and his personal financial situation. However, as the Court of Appeals noted, the delay Jones complains of was caused not by the Board, but by Jones' own waiver of his right to a prompt hearing. *Jones v. State*, 140 Wn. App. 476, 497, 166 P.3d 1219 (2007). According to Jones, "By November, 1999, [he] had lost the business." CP 217. Had Jones demanded a prompt hearing, it would have occurred in early September, 1999. Had Jones successfully challenged the Board's suspension at such a prompt hearing, his licenses could have been restored and he could have avoided his damages. Having chosen to waive his right to a prompt hearing and sidestep the Board's extensive process, Jones should not now be heard to claim that this process was futile.

**3. This Case is Distinguishable from *City of Seattle v. Blume***

In *City of Seattle v. Blume*, 134 Wn.2d 243, 947 P.2d 223 (1997), this Court rejected the doctrine known as the independent business judgment rule, under which the Court had previously held that a plaintiff's failure to exhaust legal remedies negates the causation element in a damages claim. *Id.* at 252. The Court was concerned that the rule discouraged settlement, particularly where the tortfeasor may have the means to draw out litigation. *Id.* at 259. As this Court noted, the independent business judgment rule was

first formulated in *King v. City of Seattle*, 84 Wn.2d 239, 525 P.2d 228 (1974), as a defense to a cause of action for tortious interference created for persons to whom municipalities wrongfully denied land use applications. *Blume*, 134 Wn.2d at 252 – 54. While the majority in *Blume* did not completely overrule *King* as urged by Justice Talmadge in his dissenting opinion, it eliminated the independent judgment defense and held that the City's liability for the Blumes' injuries had to be determined according to traditional principles of proximate causation. *Id.* at 252.

This case is distinguishable. In *Blume*, the Blumes withdrew their land use application after the City delayed its decision on their application for over 5 years and 4 months and caused them to expend in excess of one million dollars. *Id.* at 225. Here, Jones had an absolute right to a prompt hearing within twenty days of the summary suspension of his licenses. Furthermore, holding Jones to the stipulated order he agreed to will not discourage settlement. Rather, allowing Jones to proceed with his tort claims will circumvent and undermine the stipulated administrative settlement and Jones' agreement to assume all costs of complying with the Board's order, which is mandated by RCW 18.130.160. Given that Jones had the option of pursuing a timely administrative remedy and that the settlement of his disciplinary action contemplated the damages he now seeks, the policies underlying the *Blume* decision are not implicated here.

**4. Because Jones Failed to Exhaust Administrative Remedies, He Cannot Establish Proximate Causation**

While this Court abrogated the independent business judgment rule in *Blume*, it took care to note:

We are not saying, as a matter of law, that a person's own conduct may not be the sole cause of his or her injuries, thus breaking the chain of causation. The court must decide based on traditional principles of proximate causation whether or not a defendant was the cause of the injuries suffered and whether the duty to mitigate was met.

*Id.* at 260. Here, the Court of Appeals' decision should also be affirmed based on such traditional principles of proximate causation. Proximate cause consists of legal causation and cause in fact. *Hartley v. State*, 103 Wn.2d 768, 777, 698 P.2d 77 (1985). Thus, in *Laymon* the Department of Natural Resources issued a stop work order requiring the plaintiff, Laymon, to cease logging on his property, because a bald eagle's nest had been reported nearby. *Id.* at 522. The order could have been challenged by Laymon if he had filed a timely appeal with the Forest Practices Appeals Board. *Id.* 522-23. Citing *Blume* in its analysis, the Court of Appeals upheld dismissal of Laymon's tort lawsuit based on his failure to exhaust administrative remedies. *Laymon*, 99 Wn. App. at 525 – 28.

Similarly, here Jones failed to avail himself of the administrative hearing that was specifically designed to address his license suspensions. Had Jones demanded a prompt hearing, the Board would have been

required to provide him with one within twenty (20) days of its summary action. WAC 246-11-340. Jones waived his opportunities for both a prompt hearing and a regularly scheduled hearing. Indeed, Jones not only waived his opportunity to a hearing, he ultimately *agreed* to the five-year suspension imposed by the Board in the stipulated order. Allowing Jones to proceed with a tort lawsuit in these circumstances would completely undermine the administrative process and defy RCW 18.130.160, which requires that a pharmacist subject to an order imposing disciplinary sanctions bear all costs associated with complying with the order. In *Rains*, this Court held that where the plaintiff failed to comply with the Legislature's intent that the APA's administrative remedies be exhausted, as a matter of policy the State had no tort liability. *Rains*, 89 Wn.2d at 744. Here, the Court should again find a lack of causation based on the Legislature's intent and Jones' stipulation.

Moreover, under the doctrine of superseding cause, a defendant's conduct is a proximate cause of the plaintiff's injury only if such conduct is unbroken by any new, independent act of a third party that breaks the chain of causation. *Schooley v. Pinch's Deli Market, Inc.*, 134 Wn.2d 468, 482, 951 P.2d 749 (1998). Numerous superseding, intervening acts, which are associated with Jones' failure to completely exhaust the Board's remedies, interrupt the causal chain between any conduct by the investigators and any

damages claimed by Jones. Specifically, independent acts by the Pharmacy Board, a quasi-judicial entity that is immune to liability<sup>10</sup>, and acts by Jones himself severed this causal chain.

Jones' own decisions are the sole proximate cause of any damages he sustained. Jones waived the available prompt hearing and later entered into a stipulation, agreeing to entry of an order imposing a five-year suspension and assuming all costs associated with complying with the order. As a matter of law, these acts were the sole cause of his damages.

The Board's independent decisions regarding Jones' licenses are also superseding, intervening acts that sever the causal chain. Jones filed a motion to stay the summary suspension, but a three-member panel of the Board – a quasi-judicial entity entitled to absolute immunity – denied the motion on September 7, 1999. Later, Jones entered into a stipulation, which the Board accepted when it signed the final order imposing the five-year suspension. Where a judicial or quasi-judicial entity makes an independent decision based on complete information, the decision is a superseding,

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<sup>10</sup> In his opposition to the State's summary judgment motion, Jones conceded that the Board and its members were entitled to quasi-judicial immunity. CP 195. The Board is also entitled to immunity conferred by statute. RCW 18.64.005 (9) provides that the Pharmacy Board and its members are immune, collectively and individually, to any action based on Board disciplinary proceedings or other official Board acts. RCW 18.130.300 also provides, "The secretary, members of boards or commissions, or individuals acting on their behalf are immune from suit in any action, civil or criminal, based on any disciplinary proceedings or other official acts performed in the course of their duties." The State argued in its summary judgment motion that all defendants were entitled to immunity under these statutes. CP 448 – 49.

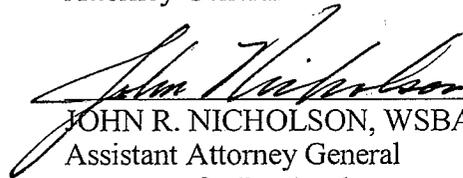
intervening act severing the causal chain. *See, e.g., Tyner v. Dept. of Social and Health Services*, 141 Wn.2d 68, 88, 1 P.3d 1148 (2000); *Bishop v. Miche*, 137 Wn.2d 518, 531 – 32, 937 P.2d 465 (1999); *Petcu v. State*, 121 Wn. App. 36, 59 – 60, 86 P.3d 1234 (2004); *West Coast, Inc. v. Snohomish County*, 112 Wn. App. 200, 215, 48 P.3d 997 (2002). The Board’s order denying Jones’ motion to stay the summary suspension and its final order were entered only after the Board considered all material information, including that submitted by Jones. Because these decisions were independent<sup>11</sup>, they broke the causal chain between Jones’ damages and any conduct by the investigators.

### III. CONCLUSION

For all the forgoing reasons, the Court of Appeals should be affirmed.

RESPECTFULLY SUBMITTED this 27<sup>th</sup> day of October, 2008.

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<sup>11</sup> Even when a stipulation is submitted to the Board, the Board may reject the stipulation. The “procedural stipulations” section of the agreed order signed by Jones expressly contemplated the possibility that the Board could reject the agreed order. CP 414 (Paragraphs 1.9 – 1.11).

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CERTIFICATE OF SERVICE

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BY RONALD R. CARPENTER

I certify under penalty of perjury in accordance with the laws of  
the State of Washington that I arranged for the original and one copy of  
the preceding Respondent's Supplemental Brief to be filed by Legal  
Messenger in the Supreme Court of Washington at the following address:

Supreme Court of Washington  
415 12<sup>th</sup> Avenue SW  
Olympia, WA 98504

And, that I arranged for a copy of the preceding Respondent's  
Supplemental Brief to be served on appellant's counsel at the following  
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Bellingham, WA 98225-4548

DATED this 27<sup>th</sup> day of October, 2008, at Seattle, WA.

Valerie Tucker  
VALERIE TUCKER

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## **Appendix A**

**August 27, 1999 Answer to Statement of Charges**

FILED

AUG 27 1999

Adjudicative Clerk  
Office

STATE OF WASHINGTON  
DEPARTMENT OF HEALTH  
BOARD OF PHARMACY

FILED  
(360)586-2171

In the Matter of the License to Practice  
Pharmacy of

MICHAEL S. JONES, R.Ph.,  
License No. 10993,

In the Matter of the Pharmacy Location  
License of

The Medicine Shoppe Pharmacy,  
License No. 55751,

Respondents.

) Docket No. 99-08-A-1016PH  
)  
) Docket No. 99-08-A-1017CP  
)  
) ANSWER TO STATEMENT OF  
) CHARGES AND REQUEST FOR  
) PROMPT HEARING OR  
) SETTLEMENT AND REGULARLY  
) SCHEDULED HEARING  
)  
)  
)

TO: Michael S. Jones, RPh  
17330 26<sup>th</sup> Ave SE  
Bothell WA 98012-6548  
(425) 402-7960  
and  
Medicine Shoppe Pharmacy  
9430 State Ave  
Marysville WA 98270

Correct Name: \_\_\_\_\_  
Correct Address: \_\_\_\_\_  
\_\_\_\_\_  
Correct Phone: \_\_\_\_\_

**INSTRUCTIONS:** This form may be used to answer the Statement of Charges and request a prompt hearing and/or a settlement and regularly scheduled hearing. Correct your name, address and phone number above, if necessary, and enter your answers below and sign and date this form. Return it to:

Adjudicative Clerk Office  
1107 Eastside Street  
PO Box 47879

ANSWER TO STATEMENT OF CHARGES AND  
REQUEST FOR PROMPT HEARING OR SETTLEMENT  
AND REGULARLY SCHEDULED HEARING- PAGE 1

04132222

I will file a motion to contest the summary action. I understand that by doing so I waive my opportunity to a prompt hearing, but not my right to an expedited hearing.

NOTE: IF YOU SELECT THIS OPTION, YOUR MOTION MUST BE RECEIVED BY THE ADJUDICATIVE CLERK OFFICE BY August 27, 1999.

I request a prompt hearing. The prompt hearing is scheduled for September 10, 1999. I understand that I (or my attorney) will be required to participate in all stages of the adjudicative proceeding in accordance with chapter 246-11 WAC.

NOTE: IF YOU SELECT THIS OPTION, THIS FORM MUST BE RECEIVED BY THE ADJUDICATIVE CLERK OFFICE BY August 27, 1999.

I waive my opportunity for a prompt hearing; however, I request an opportunity for settlement and a regularly scheduled hearing on the allegations in the Statement of Charges if settlement is not reached. I understand that a scheduling order will be issued and that I (or my attorney) will be required to participate in all stages of the adjudicative proceeding in accordance with chapter 246-11 WAC.

I waive my opportunity for a prompt hearing and I waive my opportunity for settlement and a regularly scheduled hearing. I am enclosing my written statement and/or any materials I wish to have the Board consider in disposition of the case.

#### Section 2: REPRESENTATION

**INSTRUCTIONS:** Mark the appropriate response and provide correct information:

I will be represented by an attorney who must file a notice of appearance. His/her name, address and phone number are:

---

ANSWER TO STATEMENT OF CHARGES AND  
REQUEST FOR PROMPT HEARING OR SETTLEMENT  
AND REGULARLY SCHEDULED HEARING- PAGE 3 OF 3

04132223

Name: W. BERNARD BAIJMAN  
*Attorney at Law*  
 Address: 

 Suite 601, Pioneer Building  
 One Pioneer Square  
 Seattle, Washington 98104
   
 Phone: (206) 464-1860

I will not be represented by an attorney.

**Section 3: RESPONSE TO ALLEGATIONS**

**INSTRUCTIONS:** Indicate below whether you admit, deny or do not contest each of the alleged facts and alleged violations contained in the numbered paragraphs in the Statement of Charges. Check one response for each numbered paragraph.

Paragraph Number	Admit	Deny	Do Not Contest
1.1	x		
1.2	x		
1.3	x		
1.4	x		
1.5	x		
1.6	x		
1.7	x		
1.8	x		
1.8.1			x
1.8.2		x	
1.8.3		x	
1.8.4		too vague	to be, and were, destroyed
1.8.5		x	
1.8.6			DO NOT KNOW

ANSWER TO STATEMENT OF CHARGES AND  
 REQUEST FOR PROMPT HEARING OR SETTLEMENT  
 AND REGULARLY SCHEDULED HEARING- PAGE 4 OF 4

04132224

1.8.7		x	
1.9		X	
1.10		X	
1.10.1		X	
1.10.2			X BEING CORRECTED AT THE TIME
1.10.3		X	
1.10.4			X UNKNOWN
1.10.5	x	X	COMPOUND STATEMENT
1.10.6	X	X	" "
1.10.7		X	
1.10.8		x	
1.10.9	x	X	COMPOUND STATEMENT
1.10.10		X	
1.10.11			x
1.10.12			X
1.11			X BEING CORRECTED AT THE TIME
1.12	x		
1.12.1		X	
1.12.2		X	
1.12.3			X
1.12.4			UNKNOWN
1.12.5	x	X	COMPOUND STATEMENT
1.12.6	X	X	" "
1.12.7		x	
1.12.8		X	
1.12.9			X SINCE BEEN LOOKED
1.13		X	
2.1		X	

ANSWER TO STATEMENT OF CHARGES AND  
REQUEST FOR PROMPT HEARING OR SETTLEMENT  
AND REGULARLY SCHEDULED HEARING- PAGE 5 OF 5

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2.2		X	
2.3		X	
2.4		X	
2.5		X	
2.6		X	
2.7		X	
2.8		X	
2.9		X	
2.10		X	
2.11		X	
2.12		X	
2.13		X	
2.14		X	
2.15		X	
2.16		X	
2.17		X	
2.18		X	
2.19		X	
2.20		X	
2.21		X	
2.22		X	
2.23		X	
2.24		X	
2.25		X	
2.26		X	
2.27		X	
2.28		X	

ANSWER TO STATEMENT OF CHARGES AND  
 REQUEST FOR PROMPT HEARING OR SETTLEMENT  
 AND REGULARLY SCHEDULED HEARING- PAGE 6 OF 6

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**INSTRUCTIONS: Mark the appropriate response:**

- I have attached a sworn statement in my defense or in mitigation of charges.
- I have not attached a sworn statement.

**Section 4: INTERPRETER REQUEST**

**INSTRUCTIONS:** Complete the appropriate information if you request an interpreter because of a primary language other than English and/or because of a hearing or speech impairment. If you later determine that an interpreter will be necessary, you must notify the parties listed in the Notice of Opportunity for Settlement and Hearing. Costs for an interpreter will be paid pursuant to WAC 246-11-200.

- I request that a qualified interpreter be appointed to interpret for me or for my witness(es). My (or my witness(es)') primary language is \_\_\_\_\_.
- I request that a qualified interpreter be appointed to interpret for me or for my witness(es). My (or my witness(es)') hearing or speech impairment requires an interpreter able to communicate in the following language: \_\_\_\_\_.

**Section 5: PROCEDURAL RIGHTS**

Pursuant to chapter 34.05 RCW, you have the right to demand a regularly scheduled hearing, to defend against the allegations in the Statement of Charges. You also have the right to demand a prompt hearing to contest the Statement of Charges and summary action of your licenses. You have the right to be represented by an attorney at your own expense, to subpoena witnesses or the production of books or documents, and to otherwise defend against the summary order and the allegations in the Statement of Charges. The Board has adopted procedural rules

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ANSWER TO STATEMENT OF CHARGES AND  
REQUEST FOR PROMPT HEARING OR SETTLEMENT  
AND REGULARLY SCHEDULED HEARING- PAGE 7 OF 7

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for the exercise of these rights and for the conduct of any adjudicative proceeding you request.

The rules are contained in chapter 246-11 WAC.

DATED this 27<sup>th</sup> day of August, 1999.

Sign here:

M. S. Jones  
MICHAEL S. JONES  
Respondent  
*Power of Atty.  
for M.S. Jones*

FOR INTERNAL USE ONLY. INTERNAL TRACKING NUMBERS:  
99070003, 99040001, 99040004, 99030003, 99070071

ANSWER TO STATEMENT OF CHARGES AND  
REQUEST FOR PROMPT HEARING OR SETTLEMENT  
AND REGULARLY SCHEDULED HEARING- PAGE 8 OF 8

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## **Appendix B**

**September 7, 1999 Order on Motion to Modify Ex  
Parte Order of Summary Action**

STATE OF WASHINGTON  
DEPARTMENT OF HEALTH  
BOARD OF PHARMACY

In the Matter of the License to Practice )	
as a Pharmacist of: )	Docket No. 99-08-A-1016PH
	Docket No. 99-08-A-1017CF
MICHAEL S. JONES, R.Ph., )	
License No. 10993. )	
	ORDER ON MOTION TO MODIFY
In the Matter of Pharmacy Location )	EX PARTE ORDER OF SUMMARY
License of: )	ACTION
The Medicine Shoppe Pharmacy, )	
License No. 55751 )	
Respondents. )	

This matter came before Health Law Judge Arthur E. DeBusschere, Presiding Officer for the Board of Pharmacy (the Board), on a Motion to Modify Ex Parte Order of Summary Action, brought by the Respondent, Michael S. Jones, R.Ph., by and through his counsel, W. Bernard Bauman, Attorney at Law. Lori Lebon Salo, Assistant Attorney General, represents the Department of Health (the Department). The Board members deciding this motion were Sharron Sellers, Public Member, Donna Docktor, R.Ph.; and C.A. Leon Alzola, R.Ph., Panel Chair.

The Board having reviewed the motion and the documents submitted in support of this motion, hereby enters the following:

**I. PROCEDURAL HISTORY**

1.1 On August 17, 1999, the following documents were served upon the Respondent: (1) Statement of Charges; (2) Notice and Opportunity for Prompt Hearing, Regularly Scheduled Hearing or Settlement; (3) Answer to Statement of Charges and

**ORDER ON MOTION TO MODIFY  
EX PARTE ORDER OF SUMMARY ACTION - Page 1**

**ORIGINAL**

04132101

Request for Prompt Hearing or Settlement and Regularly Scheduled Hearing; and (4) Ex Parte Order of Summary Action. In the Ex Parte Order of Summary Action, the Board ordered that the Respondent's license to practice as a pharmacist in the state of Washington be summarily suspended. The Board also ordered that the license issued to Respondent Medicine Shoppe Pharmacy, located at 9430 State Street in Marysville, Washington, to operate as a pharmacy be summarily suspended

1.2 On August 17, 1999, the Respondent filed an Answer to Statement of Charges. In his Answer, the Respondent indicated that he would file a motion to contest the summary action.

1.3 On August 30, 1999, the Respondent filed a Motion to Modify Ex Parte Order of Summary Action and a Declaration of Bernard Bauman in Support of his Motion. Also filed was a Declaration of Michael Jones, R.Ph.

1.4 On September 1, 1999, the Department filed a Response to Respondent's Motion to Modify Order of Summary Action and attached Department's Exhibits 1-5.

1.5 On September 2, 1999, the Respondent filed a Declaration of Bernard Bauman in Reply to Department's Response, which was also signed by the Respondent. Attached were Respondent's Exhibits 1-6.

1.6 On September 2, 1999, the Presiding Officer conducted a telephone conference with the parties. In regards to his motion to modify, the Respondent elected not to present oral argument on his motion to modify on September 10, 1999. Instead, the Respondent requested to have the Board consider his Motion to Modify as soon as a meeting time could be arranged. The Presiding Officer informed the Respondent that

ORDER ON MOTION TO MODIFY  
EX PARTE ORDER OF SUMMARY ACTION - Page 2

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if he received a decision to his disfavor, he may make a motion to have an expedited hearing, but that he has waived his right to a prompt hearing, which was scheduled for September 10, 1999.

1.7 On September 3, 1999, the Presiding Officer conducted a second telephone conference with the parties. The Presiding Officer heard oral argument on the issue of timeliness. The Presiding Officer ruled that the Motion to Modify was timely filed. The Respondent had filed his Answer to Statement of Charges on August 27, 1999, and timely stated that he would be filing a Motion to Modify. Further, the Respondent had not requested a prompt hearing within 10 days of service, which was required under the rules, WAC 246-11-340(3). Next, the Presiding Officer ruled on the Department's objections to Respondent's Exhibits No. 1, No. 2 and No. 6, which were attached to Respondent's Reply Declaration. During a second prehearing conference conducted on September 3, 1999, the Presiding Officer provided clarification on how the corrected exhibits should be filed.

1.8 On September 7, 1999, the Respondent filed corrections to Respondent's Exhibit No. 2 and No. 6, and filed an additional exhibit, Respondent's Exhibit No. 7, which was a declaration by W. Bernard Bauman.

1.9 On September 7, 1999, the Board met to consider the Respondent's Motion to Modify Ex Parte Order of Summary Action.

## II. FINDINGS ON RESPONDENT'S MOTION TO MODIFY

The Respondent moved for an order modifying the Ex Parte Order of Summary Action and staying the summary suspension of the licenses issued to Respondent and

ORDER ON MOTION TO MODIFY  
EX PARTE ORDER OF SUMMARY ACTION - Page 3

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Medicine Shoppe, located at 8430 State Street in Marysville, Washington. The Respondent requested that both licenses be reinstated. The Board considered the documents filed by the Respondent and reviewed the filed exhibits. The Board also considered the Department's arguments and the attached exhibits. The Board finds that the arguments and evidence provided by the Respondent inadequately addressed the existence of immediate danger to the public health, safety and welfare. The Respondent had committed serious violations of the pharmacy laws by operating the pharmacy below the standard of care. The Board could not be assured by the Respondent's assertions that he has corrected the problems and that he will remain in compliance. The Respondent has a history of committing violations of the pharmacy law, correcting the violations, but then violating the laws again. The Board finds that the concerns for the protection of the public outweigh the Respondent's assertions that the violations have been corrected.

### III. CONCLUSIONS OF LAW

The Board has authority to take emergency adjudicative action to address an immediate danger to the public health, safety, or welfare. RCW 34.05.422(4), RCW 34.05.479, RCW 18.130.050(7); and WAC 246-11-300. In this case, the Board considered the Respondent's arguments to modify the Ex Parte Order of Summary Action. The Board affirms that the existence of immediate danger to the public health, safety, or welfare remains. The Respondent's request to modify the Ex Parte Order of Summary Action did not adequately address the danger to the public health, safety or welfare. The Ex Parte Order of Summary Action, which was ordered on August 17,

ORDER ON MOTION TO MODIFY  
EX PARTE ORDER OF SUMMARY ACTION - Page 4

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1999, is necessary to address this danger to the public and is the least restrictive action justified by the danger posed. The Respondent's Motion to Modify Ex Parte Order of Summary Action should be denied.

**IV. ORDER**

Based upon the above, the Board hereby ORDERS that the Respondent's Motion to Modify Ex-Parte Order of Summary Action in this matter is DENIED.

DATED THIS 7<sup>th</sup> DAY OF SEPTEMBER, 1999.

**BOARD OF PHARMACY**



SHARRON SELLERS, Public Member, for  
C.A. LEON ALZOLA, R.Ph., Panel Chair

ORDER ON MOTION TO MODIFY  
EX PARTE ORDER OF SUMMARY ACTION - Page 5

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## **Appendix C**

### **Stipulated Findings of Fact, Conclusions of Law and Agreed Order**

State of Washington  
Department of Health  
Board of Pharmacy

In the Matter of the License to Practice  
Pharmacy of: )

MICHAEL S. JONES, R.Ph.,  
License No. 10993 )

In the Matter of the Pharmacy Location  
License of: )

The Medicine Shoppe Pharmacy,  
License No. 55751, )

Respondents. )

) Docket No. 99-08-A-1016PH

) Docket No. 99-08-A-1017CF

) STIPULATED FINDINGS OF FACT,  
) CONCLUSIONS OF LAW AND  
) AGREED ORDER

The State of Washington Board of Pharmacy, by and through David M. Hankins,  
Assistant Attorney General Prosecutor and Michael S. Jones, R.Ph., represented by W. Bernard  
Bauman stipulate and agree to the following:

**Section 1: Procedural Stipulations**

1.1 Michael S. Jones, Respondent, was issued a license to practice pharmacy in the  
state of Washington in June 1980. Respondent's license to practice pharmacy in the state of  
Washington expires on October 24, 1999.

1.2 On October 25, 1999 the Board of Pharmacy issued an Amended Statement of  
Charges against Respondent.

1.3 The Statement of Charges alleges that Respondent violated RCW 18.64.160(5),  
.165(2), .245, .246, 270, 18.130.180(1), (4), (6), (7), (12), (13), 69.04.450, .490, .510, 69.41.030,

STIPULATED FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND AGREED ORDER - PAGE 1

**ORIGINAL**

04131830

.042, .050, 69.50.306, .308(d)(e), .401(1)(d); WAC 246-863-095(f), -110, 246-869-100(1)(2)(a)-(c),  
-130, -150, -160(4)(5), -190, -210, -230, 246-875-001, -020, -040, 246-901-080(2), -090, -100(3).

1.4 Respondent understands that the State is prepared to proceed to a hearing on the allegations in the Statement of Charges.

1.5 Respondent understands that he has the right to defend himself against the allegations in the Statement of Charges by presenting evidence at a hearing.

1.6 Respondent understands that, should the State prove at a hearing the allegations in the Statement of Charges, the Board of Pharmacy has the power and authority to impose sanctions pursuant to RCW 18.130.160.

1.7 Respondent and the Board of Pharmacy agree to expedite the resolution of this matter by means of this Stipulated Findings of Fact, Conclusions of Law, and Agreed Order (Agreed Order).

1.8 Respondent waives the opportunity for a hearing on the Statement of Charges contingent upon signature and acceptance of this Agreed Order by the Board of Pharmacy.

1.9 This Agreed Order is not binding unless and until it is signed and accepted by the Board of Pharmacy.

1.10 Should this Agreed Order be signed and accepted it will be subject to the reporting requirements of RCW 18.130.110, Section 1128E of the Social Security Act, and any applicable interstate/national reporting requirements.

1.11 Should this Agreed Order be rejected, Respondent waives any objection to the participation at hearing of all or some of the Board members who heard the Agreed Order presentation.

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STIPULATED FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND AGREED ORDER - PAGE 2

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## Section 2: Stipulated Facts

While Respondent does not admit to the following conduct, Respondent acknowledges that the evidence is sufficient to justify the following findings:

2.1 Respondent Medicine Shoppe Pharmacy located at 9430 State Avenue, Marysville, Washington was issued a location license to operate as a pharmacy in the state of Washington in October 1996. The current location license expires on June 1, 2000.

2.2 Respondent Michael Jones is the owner, responsible manager, and only pharmacist listed as working at the Medicine Shoppe in Marysville, Washington.

2.3 On March 1, 1994, a Statement of Charges was issued against Respondent Michael Jones related to a prescription filling error while Respondent was working as a pharmacist at Safeway Pharmacy # 497 in Seattle, Washington

2.4 On July 6, 1994, the Board entered a Findings of Fact, Conclusions of Law and Order placing Respondent's license to practice pharmacy in the state of Washington on probation for a period of one year and imposing certain terms and conditions. One of the conditions imposed on Respondent was a requirement that he create and submit a plan to avoid violations of pharmacy law related to the filling of prescriptions.

2.5 On December 7, 1995, Respondent's license to practice pharmacy in the state of Washington was fully reinstated.

2.6 In approximately October 1996, Respondent Jones purchased and operated The Medicine Shoppe in Marysville, Washington.

2.7 On December 17, 1998, Respondent Medicine Shoppe received a failing inspection grade of 79 from Board of Pharmacy Investigator Wene while conducting a routine inspection of the pharmacy. An inspection score of 90-100 is classified as a passing pharmacy.

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STIPULATED FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND AGREED ORDER - PAGE 3

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inspection score. An inspection score of 80-89 is classified as a conditional pharmacy inspection score. An inspection score of 0-79 is classified as an unsatisfactory pharmacy inspection score. At that time, Respondent Michael Jones was the owner, responsible manager, and only pharmacist listed as working at the Medicine Shoppe in Marysville, Washington. The violations included but were not limited to:

- 2.7.1 Failing to obtain chronic conditions on patients of the pharmacy;
- 2.7.2 Dispensing the majority of prescriptions in non child-resistant containers without a written request from either the patient or the prescriber;
- 2.7.3 Various required records required by state and federal law were either inaccurate, incomplete or not available;
- 2.7.4 There was a box of filled prescription containers, many unlabeled, on the floor of the pharmacy.
- 2.7.5 Investigator Wene discovered a prescription filling error in the will call area. A prescription for [REDACTED] was incorrectly filled with [REDACTED]
- 2.7.6 Many of the prescriptions in the will call area had labeled expiration dates exceeding the manufacturer's expiration date;
- 2.7.7 Most of the prescriptions in the will call area contained the incorrect NDC number for the product in the prescription container;
- 2.8 On February 3, 1999, Board of Pharmacy Investigator Wene conducted a re-inspection in relation to the December 1998 failing score. During the February 3, 1999 inspection, the pharmacy, received a passing score of 94. The deducted points were related to

STIPULATED FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND AGREED ORDER - PAGE 4

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inaccurate, incomplete or missing records required by state or federal law. At that time, Respondent Michael Jones was the owner, responsible manager, and only pharmacist listed as working at the Medicine Shoppe in Marysville, Washington.

2.9 On July 12, 1999; Board of Pharmacy Investigators Wene and Jeppesen conducted a routine inspection of the Medicine Shoppe Pharmacy in Marysville. At that time, Respondent Michael Jones was the owner, responsible manager, and only pharmacist listed as working at the Medicine Shoppe in Marysville, Washington. The pharmacy received an extremely low failing grade of 48. At that time the violations included but were not limited to:

2.9.1 Failing to obtain chronic conditions and allergies on patients of the pharmacy. Disease state management is coded in ICD-9 codes and provides the information in coded form, not readily readable by the Pharmacist.

2.9.2 Numerous (greater than 10) prescriptions were labeled with a different generic product than indicated on the label or NDC Code. Several of these prescriptions were dispensed in the presence of the Board of Pharmacy Investigators.

2.9.3 Dispensing the majority (in excess of 90%) of prescriptions in non-child-resistant containers without a written request from either the patient or the prescriber for non child-resistant packaging;

2.9.4 Thirty-eight (38) drug products were outdated. Of those, 18 drugs were legend or controlled substances and 20 were OTC products.

2.9.5 Various records required by federal law (DEA) were either inaccurate, incomplete or not available. DEA order forms and invoices could not be reconciled. Respondent was unable to locate several required DEA forms. There was poor organization of DEA inventory records,

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STIPULATED FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND AGREED ORDER - PAGE 5

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including non-sequential filing. Several DEA records did not include date and amount received on DEA 222 forms.

2.9.6 DEA Inventory incomplete, DEA inventory for Schedules III-V was missing. Respondent was unable to generate reports for Schedule II drugs. The daily refill reports were not signed, stored in various locations, out of sequence, with several months not located.

2.9.7 Facts and Comparisons, the only reference source in the pharmacy, had not been updated for at least nine (9) months.

2.9.8 Pharmacy Assistant did not have a name badge and none had been ordered. No Pharmacy Assistant certificate had been generated or signed. Modifications to the Pharmacy Assistant Utilization Plan were in place without Board approval.

2.9.9 The prescription records were inaccurate, missing and poorly organized. Examples include prescription files with non-sequential order. Several prescriptions, both C-II and other drugs were unaccounted for. Prescription files were kept with no organization. Respondent Jones was unable to locate files in a timely manner.

2.9.10 Minimum procedures for utilization of the patient medication system were inadequate.

2.9.11 During the inspection, a patient returned a prescription so that Respondent Jones could correct the instructions for use. The correction was made but no audit trail of the change was entered in the pharmacy computer.

2.9.12 The pharmacy was generally disorganized and dirty. The pharmacy sink and immediate area were dirty and with numerous dirty food dishes.

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STIPULATED FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND AGREED ORDER - PAGE 6

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2.10 On July 13, 1999, Investigator Jeppesen returned to the pharmacy to retrieve documents promised by Respondent Jones. At that time Respondent Jones stated he could not locate the documents. Respondent stated that his computer could generate the required reports but that he, (Respondent) did not know how to generate them.

2.11 On August 10, 1999, Investigators Wene and Jeppesen returned to the Medicine Shop Pharmacy in Marysville, Washington, to conduct the re-inspection in relation to the July 12, 1999 failing score. This inspection again resulted in an extremely low failing score of 56. At that time, Respondent Michael Jones was the owner, responsible manager, and only pharmacist listed as working at the Medicine Shoppe in Marysville, Washington. At that time the violations included but were not limited to:

2.11.1 Six prescriptions selected randomly in the will call area did not have allergy or chronic conditions noted in the patient profile. The disease state - drug interaction fields had been turned off. Respondent Jones was unable to explain the purpose or the clinical significance of the clinical interaction levels that appeared for drug interaction messages.

2.11.2 Three prescriptions selected randomly from the will call area were labeled with a different generic product than indicated on the label and/or NDC Code.

2.11.3 Forty-one (41) prescriptions were located in the will call area. Of those, forty (40) were packaged in non child-resistant containers and the one that was in a child resistant container was in a container supplied by the manufacturer.

2.11.4 Eleven legend or controlled substances on the shelf were beyond the manufacturer's expiration date.

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STIPULATED FINDINGS OF FACT,  
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2.11.5 As in the July 12, 1999 inspection, various records required by federal law (DEA) were either inaccurate, incomplete or not available. The invoices for the C II drugs were not filed separately. Several DEA records did not include date and amount received on DEA 222 forms.

2.11.6 DEA Inventory records incomplete. There was no signature on the C-II, C-III - C-V inventories. Requested records could not be located.

2.11.7 Five prescriptions which had been filled and returned to the stock area were checked for accuracy of product on the label and against correct NDC numbers. All five prescriptions failed to comply with state and/or federal law.

2.11.8 Minimum procedures for utilization of the patient medication system were inadequate. The pharmacy QS-1 system was not able to create an accurate and complete audit trail for changes made to the prescriptions after filling including directions for use and drug dispensed.

2.11.9 During the period August 4, 1999 through August 5, 1999, forty-eight prescriptions were processed in the pharmacy. Of those forty-eight prescriptions, twenty-one did not have a hard copy in the prescriptions.

2.12 Respondent Michael S. Jones operated the Medicine Shoppe Pharmacy in a manner below the standard of care for the operation of a pharmacy and therefore placed the patients of his pharmacy at serious risk of significant harm.

2.13 That on or about 4-1-99, respondent refilled a prescription for patient A for [REDACTED] controlled substance. Respondent misfilled the prescription by filling it with [REDACTED]. Patient A consumed [REDACTED] over [REDACTED] period. Respondent had to be taken to the [REDACTED] in [REDACTED] Everett, Washington for treatment for a [REDACTED].

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2.14 That on or about 2-8-99, patient C was prescribed [REDACTED] by [REDACTED] physician and phoned in to respondent's pharmacy. The original prescription permitted substitution, but did not permit refills. Respondent failed to note in his phone prescription if substitution was permitted.

2.15 On or about 2-8-99, respondent filled the prescription for patient C with [REDACTED] Respondent without authorization from the physician refilled [REDACTED] prescription, and misfilled and mislabeled the medication with an increase in dosage strength on 3-1-99 and on 3-7-99 with [REDACTED]

2.16 Respondent failed to maintain the prescription hardcopy, failed to maintain accurate records and/or altered or manipulated the computer records by:

2.16.1 On 5-7-99, the pharmacy investigator obtained records from respondent's pharmacy. Patient C's medication profile record indicate respondent filled the prescription for [REDACTED] with a generic substitute [REDACTED] on 2-8-99, 3-1-99 and 3-7-99. The patient's [REDACTED] indicated that they never received the medication on 3-7-99. Respondent's daily audit log for 2-8-99 indicates he filled the prescription with [REDACTED]. The investigator also received a previous copy of respondent's daily audit log for 2-8-99 which indicates that on 2-8-99, respondent filled the medication with [REDACTED]

2.17 That on or about 9-14-98, patient D obtained a prescription of [REDACTED] [REDACTED] tablets and had the prescription filled by respondent. The patient indicate [REDACTED] did not obtain a refill of the medication. The prescription authorized only one refill. Respondent's records indicate that he refilled the [REDACTED] on 1-8-99, 2-16-99, and 3-27-99 without authorization from the prescriber and/or billed the state for prescriptions never obtained by the patient.

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2.18 That on or about 10-23-98 patient D had respondent fill a prescription for [REDACTED]. The patient's physician only prescribed [REDACTED]. Respondent's records indicate that he filled a prescription for [REDACTED] and [REDACTED]. He refilled the [REDACTED] on 11-19-98, 11-30-98, and 3-27-98. Respondent's records indicate he also refilled the [REDACTED] on 11-19-98, 11-30-98, 12-5-98, 1-8-99, 2-16-99 and 3-27-99. The patient indicated that [REDACTED] never received any [REDACTED]. Respondent failed to maintain a hardcopy of the prescription and filled a prescription without authorization from the physician and/or billed the state for medication that a patient did not receive.

2.19 That on or about 2-15-99, respondent filled a prescription for patient D for [REDACTED] a controlled substance. Respondent's medication profile records for patient D show that respondent filled the prescription as [REDACTED] and also filled a prescription for [REDACTED]. Respondent filled and refilled the [REDACTED] prescription without the physician's authorization on 2-15-99, 2-25-99 and 3-22-99. Respondent also refilled on 3-22-99, the patient's prescription for [REDACTED]. The investigator was unable to locate a hard copy of the prescription for [REDACTED]. The patient indicated to the pharmacy investigator that [REDACTED] received the [REDACTED] but not the [REDACTED].

2.20 That on or about December 1998, patient D observed respondent provide an unlabeled prescription vial containing large white caplet shaped tablets, which appear to be [REDACTED] tablets, a controlled substance, to a person in exchange for respondent's car repair.

2.21 That respondent without the physician's authorization or approval refilled a prescription for [REDACTED] tablets for patient B on 4-3-99 and 4-29-99.

**STIPULATED FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND AGREED ORDER PAGE 10**

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2.22 That respondent misfilled patient F's prescription for [REDACTED] with [REDACTED] instead of [REDACTED] as prescribed by the physician.

### Section 3: Conclusions of Law

The State and Respondent agree to the entry of the following Conclusions of Law:

3.1 The Board of Pharmacy has jurisdiction over Respondent and over the subject matter of this proceeding.

3.2 The above facts constitute unprofessional conduct in violation of RCW 18.64.160(5), .165(2), .245, .246, 270, 18.130.180(1), (4), (6), (7), (12), (13), 69.04.450, .490, .510, 69.41.030, .042, .050, 69.50.306, .308(d)(e), .401(1)(d); WAC 246-863-095(f), -110, 246-869-100(1)(2)(a)-(c), -130, -150, -160(4)(5), -190, -210, -230, 246-875-001, -020, -040, 246-901-080(2), -090, -100(3).

3.3 For purposes of settlement, the state withdraws allegation 1.15 in the amended statement of charges and the violations outlined in paragraph 2.30.

3.4 The above violations are grounds for the imposition of sanctions under RCW 18.130.160.

### Section 4: Agreed Order

Based on the preceding Stipulated Facts and Conclusions of Law, Respondent agrees to entry of the following Order:

4.1 The Pharmacy location license of Medicine Shoppe Pharmacy, license No. 55751 shall be REVOKED. Respondent shall have no right to re-apply for a pharmacy location license for at least five (5) years from the date of this order. Respondent shall promptly deliver to the Board the original license and current registration.

STIPULATED FINDINGS OF FACT,  
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- 4.2 The license to practice pharmacy issued to Michael S. Jones, shall be **SUSPENDED WITHOUT STAY** effective from the date of August 17, 1999.
- 4.3 The respondent is prohibited from functioning in a pharmacy or any other drug-related employment during the respondent's suspension. The respondent will not make public appearances representing himself as a pharmacist.
- 4.4 Respondent's license to practice pharmacy shall be **Suspended With Stay** for at least 5 years from the date of January 13, 2000.
- 4.5 Respondent shall obey all federal, state and local laws and all administrative rules governing the practice of the profession in Washington.
- 4.6 Respondent shall assume all costs of complying with this Order.
- 4.7 If Respondent violates any provision of this Order in any respect, the Board of Pharmacy may take further action against Respondent's license.
- 4.8 Respondent shall inform the Board of Pharmacy, in writing, of changes in his residential address.
- 4.9 In the event respondent should leave Washington to reside or to practice outside the state, respondent must notify in writing the Board of Pharmacy of the date of departure and return. Periods of residency or practice outside Washington will not apply to the reduction of this probationary or suspension period.
- 4.10 The respondent shall submit written notification to the Board of Pharmacy, addressed to the Program Manager, of any employment or residence address changes. The notification shall include the complete new address and telephone number. The notification must be made within twenty (20) days of the change in employment or residence address.

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**STIPULATED FINDINGS OF FACT,  
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4.11 The respondent shall submit periodic declarations under penalty of perjury stating whether there has been compliance with all conditions of this Order. Failure to submit information and/or to make true statements may subject the respondent to referral for prosecution under RCW 9A.76.020 and/or RCW 9A.72.030.

4.12 The respondent shall advise any employer who hires him or her, to function in the capacity of a health care practitioner, of the terms of this Order imposed by the Board of Pharmacy. The Respondent's employer must submit written notification to the Board indicating he or she has seen the Board's Order.

4.13 The respondent shall submit a quarterly declaration under penalty of perjury stating whether there has been compliance with all conditions of this Order. The first report is due 30 days, and on the first day of April, July, Oct or Jan and thereafter until            unless otherwise ordered by the Board of Pharmacy.

4.14 Respondent shall notify Board of Pharmacy of any employment in the health care field, including any change in employment or practice status. Respondent shall, within twenty (20) days of the effective date of this Order, or as soon thereafter as deemed by the Board of Pharmacy, submit to the Board of Pharmacy for the Board of Pharmacy's approval, a job description or description of practice and clinical privilege of respondent's present practice or position. Thereafter respondent shall submit a job description or description of practice and clinical privilege of respondent's practice or position to the Board of Pharmacy for their approval prior to making the contemplated change.

4.15 Respondent shall cause the respondent's employer to submit quarterly performance reports directly to the Board of Pharmacy on forms provided by the Board of Pharmacy. The first report is due 30 day and on the first day of April, July, Oct or Jan.

STIPULATED FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND AGREED ORDER - PAGE 13

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~~\_\_\_\_\_~~ and thereafter. The respondent shall ensure that the respondent's employer has been given a copy of this Order and the employer understands the decision of the Board of Pharmacy in this case. The respondent shall ensure that the employer makes reference to Board of Pharmacy decision in the reports to the Board of Pharmacy.

4.16 The respondent is hereby placed on notice that it is the responsibility of the respondent to ensure that all required reports are submitted to the Board of Pharmacy in a timely manner.

4.17 Within thirty (30) days of the effective date of this Order, or as soon thereafter as deemed by the Board of Pharmacy, respondent shall make an appointment to undergo a psychological evaluation by a psychologist designated by the Board of Pharmacy who shall furnish a report to the Board of Pharmacy according to the following protocol adopted by the Board of Pharmacy:

**Please perform a psychological examination to assess:**

1. Psychological diagnosis, if any.
2. Treatment recommendations, if any.

**The evaluation should consist of the following components:**

1. A complete social, past medical, developmental and psychological history.
2. A review of this Agreed Order.
3. Any other physical examinations, psychological or laboratory studies deemed necessary by the evaluator.

The report of examination should discuss fully and with specificity the basis for the diagnosis, if any, conclusions and recommendations made pursuant to items 1-3 in the first paragraph above. The report of examination should be sent to:

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Board of Pharmacy  
PO Box 47863  
Olympia WA 98504-7863

A copy shall be provided to the Respondent.

4.18 Within sixty (60) days of the effective date of this decision, or as soon thereafter as deemed by the Board of Pharmacy, respondent shall submit to the Board of Pharmacy for its prior approval, a program of remedial education, related to the violations found in the decision. The exact number of hours and the specific content of the program shall be determined by the Board of Pharmacy and shall not total less than twenty-five (25). This program shall be in addition to the Continuing Education requirement for re-licensure. The Board of Pharmacy may also require respondent to pass an examination related to the content of the program.

4.19 Respondent shall submit to the Board of Pharmacy for its prior approval, a clinical education program related to the violations found in the decision. The exact number of hours and the specific content of the program shall be determined by the Board of Pharmacy and shall total not less than four (4) nor more than twenty (20) hours per week. Respondent shall complete the clinical training program prior to seeking modification. The Board of Pharmacy may require the respondent to pass an examination related to the content of the program.

4.20 Respondent shall take and pass the MPJE examination within 60 days from the date of this order. Failure to pass the examination may result in the suspension of the license until such time as a passing score is achieved. Respondent shall not engage in the practice of the profession until respondent has passed the examination and has been so notified by the Board in writing.

4.21 Respondent is prohibited from serving as the responsible manager of a pharmacy or supervising pharmacy interns.

**4.22 SUPERVISING PHARMACIST AGREEMENT**

The supervising pharmacist signs an agreement that they:

1. Have reviewed, are aware of, and understands the terms of the Order.

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STIPULATED FINDINGS OF FACT,  
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2. Agree to be a supervising pharmacist and provide quarterly reports concerning:
  - a. obey the laws and rules of practice of pharmacy;
  - b. obey rules of employment and job performance;
  - c. relationship with other employees and customers;
  - d. any other relevant matters.

#### LEVELS OF SUPERVISION

- X Specific Percentage Supervision requires that a supervising pharmacist have contact with and/or personally be present for supervision at least forty (40) percent of the time or 2 ½ hours – 3 ½ hours per day;

This percentage may be decreased by the reviewing board member upon submission of an employment description to 40 percent the first year, 30 percent the second year, and 20 the third year or less as the discretion of the reviewing board member.

- 4.23 The respondent shall submit to the Board of Pharmacy, within thirty (30) days of the effective date of the Order, policy and procedures relating to:

the process of receiving written and telephone prescriptions, filling the prescriptions, and checking the label and the product to prevent errors;

disposition of prescription filling errors which shall include, but not be limited to: documentation of filling errors, description of filling errors, explanation of how filling errors occurred, notification of patient and physician, and steps to be taken to prevent future errors;

error reports shall be kept for two (2) years;

A Pharmacy Board Investigator will contact the respondent to determine if the respondent is in compliance with the policy and procedures.

- 4.24 The respondent must implement a quality assurance program with thirty (30) days of receipt of the Order.

The quality assurance program is directed at prescription filling and misfilling and the number of errors in filling or labeling prescriptions. The respondent shall maintain a log of all errors in prescription filling. The log shall be maintained at the pharmacy and made available to Pharmacy Board Investigators and Staff at their request.

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STIPULATED FINDINGS OF FACT,  
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- Develop an effective quality assurance set of criteria or guidelines by which to monitor patient profiles for inappropriate, excessive or non-therapeutic quantities of medications. An outline of the process and screening questions must be submitted to the Disciplinary Authority for approval.

A Pharmacy Board Investigator will contact the Respondent to determine if the respondent is in compliance with the quality assurance program.

4.25 The Respondent shall comply with the Board's probation surveillance program including appearing in person for interviews upon request at various intervals and with reasonable notice.

4.26 Respondent may submit a written request for modification of the Board's Order for his pharmacist license only, no sooner than three years from the date of this order. Respondent, at the Board's discretion shall personally appear before the Board of Pharmacy

4.27 At the conclusion of the stayed suspension, Respondent, if requested by the Board, shall appear before the Board of Pharmacy prior to seeking reinstatement of his license to practice pharmacy.

4.28 Respondent shall assume all costs associated with the compliance of this Order.

4.29 If the respondent violates any provision of this Order in any respect, the Board of Pharmacy, after giving the respondent notice and the opportunity to be heard, may **SET ASIDE THE STAY ORDER AND IMPOSE THE SUSPENSION OF THE RESPONDENT'S LICENSURE OR MAY** impose any sanction as appropriate under RCW 18.130.160 to protect the public, or may take emergency action ordering summary suspension or restriction or limitation of the respondent's practice as authorized by RCW 18.130.050.

4.30 Within 10 days of the effective date of this order, Respondent shall thoroughly complete the attached Healthcare Integrity and Protection Data Bank Reporting Form (Section 1128E of the Social Security Act) and return it to the disciplining authority.

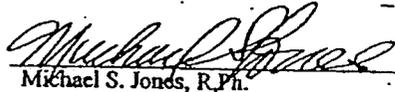
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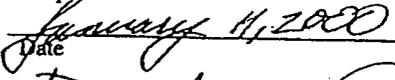
**STIPULATED FINDINGS OF FACT,  
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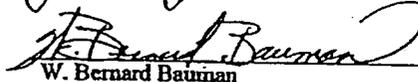
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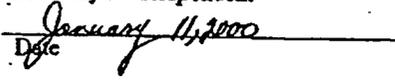
IT IS FURTHER ORDERED that all parties shall be bound by the terms and conditions of this Order. Any failure to comply with the terms and conditions of this Order will subject the respondent's license to practice as a pharmacist to further disciplinary action.

I, Michael S. Jones, Respondent, certify that I have read this Stipulated Findings of Fact, Conclusions of Law and Agreed Order in its entirety; that my counsel of record, if any, has fully explained the legal significance and consequence of it; that I fully understand and agree to all of it; and that it may be presented to the Board of Pharmacy without my appearance. If the Board accepts the Stipulated Findings of Fact, Conclusions of Law and Agreed Order, I understand that I will receive a signed copy.

  
Michael S. Jones, R.Ph.  
Respondent

  
Date

  
W. Bernard Bauman  
WSBA #8849  
Attorney for Respondent

  
Date

STIPULATED FINDINGS OF FACT,  
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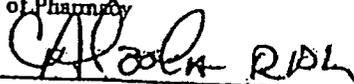
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**Section 5: Order**

The Board of Pharmacy accepts and enters this Stipulated Findings of Fact, Conclusions of Law and Agreed Order.

DATED this 4 day of February, 2005.

State of Washington  
Department of Health  
Board of Pharmacy



C. ALZOLA, R.PH  
Panel Chair

Presented by:



DAVID M. HANKINS  
WSBA #19194  
Assistant Attorney General Prosecutor

Notice of Presentation Waived and Approved  
As to Form:



W. Bernard Bauman  
WSBA #8849  
Attorney for Respondent

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**Appendix D**

**1999 Version of Uniform Disciplinary Act  
RCW 18.130**

requested, and information required by the secretary necessary to establish whether there are grounds for denial of a registration or issuance of a conditional registration under chapter 18.130 RCW. [1991 c 3 § 263; 1987 c 150 § 68.]

**18.122.090 Approval of educational programs.** The secretary shall establish by rule the standards and procedures for approval of educational programs and alternative training. The secretary may utilize or contract with individuals or organizations having expertise in the profession or in education to assist in the evaluations. The secretary shall establish by rule the standards and procedures for revocation of approval of education programs. The standards and procedures set shall apply equally to educational programs and training in the United States and in foreign jurisdictions. The secretary may establish a fee for educational program evaluations. [1991 c 3 § 264; 1987 c 150 § 69.]

**18.122.100 Examinations.** (1) The date and location of examinations shall be established by the secretary. Applicants who have been found by the secretary to meet the other requirements for licensure or certification shall be scheduled for the next examination following the filing of the application. The secretary shall establish by rule the examination application deadline.

(2) The secretary or the secretary's designees shall examine each applicant, by means determined most effective, on subjects appropriate to the scope of practice, as applicable. Such examinations shall be limited to the purpose of determining whether the applicant possesses the minimum skill and knowledge necessary to practice competently.

(3) The examination papers, all grading of the papers, and the grading of any practical work shall be preserved for a period of not less than one year after the secretary has made and published the decisions. All examinations shall be conducted under fair and wholly impartial methods.

(4) Any applicant failing to make the required grade in the first examination may take up to three subsequent examinations as the applicant desires upon prepaying a fee determined by the secretary under RCW 43.70.250 for each subsequent examination. Upon failing four examinations, the secretary may invalidate the original application and require such remedial education before the person may take future examinations.

(5) The secretary may approve an examination prepared or administered by a private testing agency or association of licensing agencies for use by an applicant in meeting the credentialing requirements. [1989 1st ex.s. c 9 § 310; 1987 c 150 § 70.]

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

**18.122.110 Applications.** Applications for credentialing shall be submitted on forms provided by the secretary. The secretary may require any information and documentation which reasonably relates to the need to determine whether the applicant meets the criteria for credentialing provided for in this chapter and chapter 18.130 RCW. Each applicant shall pay a fee determined by the secretary under RCW 43.70.250. The fee shall accompany the application. [1989 1st ex.s. c 9 § 311; 1987 c 150 § 71.]

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

**18.122.120 Waiver of examination for initial applications.** The secretary shall waive the examination and credential a person authorized to practice within the state of Washington if the secretary determines that the person meets commonly accepted standards of education and experience for the profession. This section applies only to those individuals who file an application for waiver within one year of the establishment of the authorized practice. [1991 c 3 § 265; 1987 c 150 § 72.]

**18.122.130 Endorsement.** An applicant holding a credential in another state may be credentialed to practice in this state without examination if the secretary determines that the other state's credentialing standards are substantially equivalent to the standards in this state. [1991 c 3 § 266; 1987 c 150 § 73.]

**18.122.140 Renewals.** The secretary shall establish by rule the procedural requirements and fees for renewal of a credential. Failure to renew shall invalidate the credential and all privileges granted by the credential. If a license or certificate has lapsed for a period longer than three years, the person shall demonstrate competence to the satisfaction of the secretary by taking continuing education courses, or meeting other standards determined by the secretary. [1991 c 3 § 267; 1987 c 150 § 74.]

**18.122.150 Application of uniform disciplinary act.** The uniform disciplinary act, chapter 18.130 RCW, shall govern the issuance and denial of credentials, unauthorized practice, and the discipline of persons credentialed under this chapter. The secretary shall be the disciplining authority under this chapter. [1991 c 3 § 268; 1987 c 150 § 75.]

**18.122.160 Application of chapter.** This chapter only applies to a business or profession regulated under the laws of this state if this chapter is specifically referenced in the laws regulating that business or profession. [1987 c 150 § 76.]

**18.122.900 Section captions.** Section captions as used in this chapter do not constitute any part of the law. [1987 c 150 § 77.]

**18.122.901 Severability—1987 c 150.** 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. [1987 c 150 § 80.]

Chapter 18.130

REGULATION OF HEALTH PROFESSIONS—  
UNIFORM DISCIPLINARY ACT

- Sections
- 18.130.010 Intent.
- 18.130.020 Definitions.

- 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.
- 18.130.060 Additional authority of secretary.
- 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—Immunity of complainant.
- 18.130.085 Communication with complainant.
- 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.
- 18.130.140 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.
- 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.
- 18.130.250 Retired active license status.
- 18.130.270 Continuing competency pilot projects.
- 18.130.300 Immunity from liability.
- 18.130.310 Biennial reports—Format.
- 18.130.340 Opiate therapy guidelines.
- 18.130.350 Application—Use of records or exchange of information not affected.
- 18.130.900 Short title—Applicability.
- 18.130.901 Severability—1984 c 279.

*AIDS education and training: Chapter 70.24 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 accountabili-

ty 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.]

**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.]

**18.130.020 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "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.

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

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

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

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

(6) "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.

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

(8) "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 to the complaint, to determine whether unprofessional conduct may have been committed.

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

(10) "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. [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.]

**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.

**18.130.040 Application to certain professions—****Authority of secretary—Grant or denial of licenses—**

**Procedural rules.** (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:

(i) Dispensing opticians licensed 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) Persons registered or certified under chapter 18.19 RCW;

(xi) Persons registered as nursing pool operators under chapter 18.52C RCW;

(xii) Nursing assistants registered or certified under chapter 18.88A RCW;

(xiii) Health care assistants certified under chapter 18.135 RCW;

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

(xv) Chemical dependency professionals certified under chapter 18.205 RCW;

(xvi) Sex offender treatment providers certified under chapter 18.155 RCW;

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

(xviii) Persons registered as adult family home providers and resident managers under RCW 18.48.020;

(xix) Denturists licensed under chapter 18.30 RCW; and

(xx) Orthotists and prosthetists licensed under chapter 18.200 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;

(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;

(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 issued under that chapter;

(xiii) The examining board of psychology and its disciplinary 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 based on the conditions and criteria established in this chapter and the chapters specified in subsection (2) of this section. This chapter also governs any investigation, hearing, or proceeding relating to denial of licensure or issuance of a license conditioned on the applicant's compliance with an order entered pursuant to RCW 18.130.160 by the disciplining authority.

(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. [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.]

**Effective dates—1998 c 243:** See RCW 18.205.900.

**Short title—Findings—Construction—Conflict with federal requirements—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:** See note following RCW 18.48.010.

**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.

**18.130.045 Massage practitioners—Procedures governing convicted prostitutes.** RCW 18.108.085 shall govern the issuance and revocation of licenses issued or applied for under chapter 18.108 RCW to or by persons convicted of violating RCW 9A.88.030, 9A.88.070, 9A.88.080, or 9A.88.090 or equivalent local ordinances. [1995 c 353 § 3.]

**18.130.050 Authority of disciplining authority.** 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 and to hold hearings as provided in this chapter;

(3) To issue subpoenas and administer oaths in connection with any investigation, hearing, or proceeding held under this chapter;

(4) 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;

(5) To compel attendance of witnesses at hearings;

(6) In the course of investigating a complaint or report of unprofessional conduct, to conduct practice reviews;

(7) To take emergency action ordering summary suspension of a license, or restriction or limitation of the licensee's practice pending proceedings by the disciplining authority;

(8) 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;

(9) To use individual members of the boards to direct investigations. However, the member of the board shall not subsequently participate in the hearing of the case;

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

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

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

(13) To grant or deny license applications, and in the event of a finding of unprofessional conduct by an applicant or license holder, to impose any sanction against a license applicant or license holder provided by this chapter;

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

(15) 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;

(16) To review and audit the records of licensed health facilities' or services' quality assurance committee decisions in which a licensee'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). [1995 c 336 § 4. Prior: 1993 c 367 § 21; 1993 c 367 § 5; 1987 c 150 § 2; 1984 c 279 § 5.]

Severability—1987 c 150: See RCW 18.122.901.

**18.130.060 Additional authority of secretary.** In addition to the authority specified in RCW 18.130.050, the secretary has the following additional authority:

(1) To employ such investigative, administrative, and clerical staff as necessary for the enforcement of this chapter;

(2) Upon the request of a board, to appoint not more than three pro tem members for the purpose of participating as members of one or more committees of the board in connection with proceedings specifically identified in the request. Individuals so appointed must meet the same minimum qualifications as regular members of the board. While serving as board 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. The chairperson of a committee shall be a regular member of the board appointed by the board chairperson. Committees have authority to act as directed by the board with respect to all matters concerning the review, investigation, and adjudication of all complaints, allegations, charges, and matters subject to the jurisdiction of the board. The authority to act through committees does not restrict the authority of the board to act as a single body at any phase of proceedings within the board's jurisdiction. Board committees may make interim orders and issue final decisions with respect to matters and cases delegated to the committee by the board. 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;

(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). [1995 c 336 § 5; 1991 c 3 § 269; 1989 c 175 § 68; 1987 c 150 § 3; 1984 c 279 § 6.]

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

**Severability—1987 c 150:** See RCW 18.122.901.

**18.130.065 Rules, policies, and orders—Secretary's role.** The secretary of health shall review and coordinate all proposed rules, interpretive statements, policy statements, and declaratory orders, as defined in chapter 34.05 RCW, that are proposed for adoption or issuance by any health profession board or commission vested with rule-making authority identified under RCW 18.130.040(2)(b). The secretary shall review the proposed policy statements and declaratory orders against criteria that include the effect of the proposed rule, statement, or order upon existing health care policies and practice of health professionals. Within thirty days of the receipt of a proposed rule, interpretive statement, policy statement, or declaratory order from the originating board or commission, the secretary shall inform the board or commission of the results of the review, and shall provide any comments or suggestions that the secretary deems appropriate. Emergency rule making is not subject to this review process. The secretary is authorized to adopt rules and procedures for the coordination and review under this section. [1995 c 198 § 26.]

**18.130.070 Rules requiring reports—Court orders—Immunity from liability—Licensees required to report.**

(1) The disciplining authority may adopt rules requiring any person, including, but not limited to, licensees, corporations, organizations, health care facilities, impaired practitioner programs, or voluntary substance abuse monitoring programs approved by the disciplining authority and state or local governmental agencies, to report to the disciplining authority any conviction, determination, or finding that a license holder has committed an act which constitutes unprofessional conduct, or to report information to the disciplining authority, an impaired practitioner program, or voluntary substance abuse monitoring program approved by the disciplining authority, which indicates that the license holder may not be able to practice his or her profession with reasonable skill and safety to consumers as a result of a mental or physical condition. To facilitate meeting the intent of this section, the cooperation of agencies of the federal government is requested by reporting any conviction, determination, or finding that a federal employee or contractor regulated by the disciplinary authorities enumerated in this chapter has committed an act which constituted unprofessional conduct and reporting any information which indicates that a federal employee or contractor regulated by the disciplinary authorities enumerated in this chapter may not be able to practice his or her profession with reasonable skill and safety as a result of a mental or physical condition.

(2) If a person fails to furnish a required report, the disciplining authority may petition the superior court of the county in which the person resides or is found, and the court shall issue to the person an order to furnish the required report. A failure to obey the order is a contempt of court as provided in chapter 7.21 RCW.

(3) A person is immune from civil liability, whether direct or derivative, for providing information to the disciplining authority pursuant to the rules adopted under subsection (1) of this section.

(4) The holder of a license subject to the jurisdiction of this chapter shall report to the disciplining authority any conviction, determination, or finding that the licensee has committed unprofessional conduct or is unable to practice with reasonable skill or safety. Failure to report within thirty days of notice of the conviction, determination, or finding constitutes grounds for disciplinary action. [1998 c 132 § 8; 1989 c 373 § 19; 1986 c 259 § 4; 1984 c 279 § 7.]

**Finding—Intent—Severability—1998 c 132:** See notes following RCW 18.71.0195.

**Severability—1989 c 373:** See RCW 7.21.900.

**Severability—1986 c 259:** See note following RCW 18.130.010.

**18.130.075 Temporary practice permits—Penalties.**

If an individual licensed in another state, that has licensing standards substantially equivalent to Washington, applies for a license, the disciplining authority shall issue a temporary practice permit authorizing the applicant to practice the profession pending completion of documentation that the applicant meets the requirements for a license and is also not subject to denial of a license or issuance of a conditional license under this chapter. The temporary permit may reflect statutory limitations on the scope of practice. The permit shall be issued only upon the disciplining authority receiving verification from the states in which the applicant is licensed that the applicant is currently licensed and is not subject to charges or disciplinary action for unprofessional conduct or impairment. Notwithstanding RCW 34.05.422(3), the disciplining authority shall establish, by rule, the duration of the temporary practice permits. Failure to surrender the permit is a misdemeanor under RCW 9A.20.010 and shall be unprofessional conduct under this chapter. The issuance of temporary permits is subject to the provisions of this chapter, including summary suspensions. [1991 c 332 § 2.]

**Application to scope of practice—Captions not law—1991 c 332:** See notes following RCW 18.130.010.

**18.130.080 Unprofessional conduct—Complaint—**

**Investigation—Immunity of complainant.** A person, including but not limited to consumers, licensees, corporations, organizations, health care facilities, impaired practitioner programs, or voluntary substance abuse monitoring programs approved by disciplining authorities, and state and local governmental agencies, may submit a written complaint to the disciplining authority charging a license holder or applicant with unprofessional conduct and specifying the grounds therefor or to report information to the disciplining authority, or voluntary substance abuse monitoring program, or an impaired practitioner program approved by the disciplining authority, which indicates that the license holder may not be able to practice his or her profession with reasonable skill and safety to consumers as a result of a mental or physical condition. If the disciplining authority determines that the complaint merits investigation, or if the disciplining authority has reason to believe, without a formal complaint, that a license holder or applicant may have engaged in unprofessional conduct, the disciplining authority shall

investigate to determine whether there has been unprofessional conduct. A person who files a complaint or reports information under this section in good faith is immune from suit in any civil action related to the filing or contents of the complaint. [1998 c 132 § 9; 1986 c 259 § 5; 1984 c 279 § 8.]

**Finding—Intent—Severability—1998 c 132:** See notes following RCW 18.71.0195.

**Severability—1986 c 259:** See note following RCW 18.130.010.

**18.130.085 Communication with complainant.** If the department communicates in writing to a complainant, or his or her representative, regarding his or her complaint, such communication shall not include the address or telephone number of the health care provider against whom he or she has complained. The department shall inform all applicants for a health care provider license of the provisions of this section and RCW 42.17.310 regarding the release of address and telephone information. [1993 c 360 § 1.]

**Effective date—1993 c 360:** "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 shall take effect immediately [May 15, 1993]." [1993 c 360 § 3.]

**18.130.090 Statement of charge—Request for hearing.** (1) If the disciplining authority determines, upon investigation, that there is reason to believe a violation of RCW 18.130.180 has occurred, a statement of charge or charges shall be prepared and served upon the license holder or applicant at the earliest practical time. The statement of charge or charges shall be accompanied by a notice that the license holder or applicant may request a hearing to contest the charge or charges. The license holder or applicant must file a request for hearing with the disciplining authority within twenty days after being served the statement of charges. If the twenty-day limit results in a hardship upon the license holder or applicant, he or she may request for good cause an extension not to exceed sixty additional days. If the disciplining authority finds that there is good cause, it shall grant the extension. The failure to request a hearing constitutes a default, whereupon the disciplining authority may enter a decision on the basis of the facts available to it.

(2) If a hearing is requested, the time of the hearing shall be fixed by the disciplining authority as soon as convenient, but the hearing shall not be held earlier than thirty days after service of the charges upon the license holder or applicant. [1993 c 367 § 1; 1986 c 259 § 6; 1984 c 279 § 9.]

**Severability—1986 c 259:** See note following RCW 18.130.010.

**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 licensee, 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 licensee must be notified upon receipt of a complaint, except when the notification would impede an effective investigation. At the earliest point of time the licensee 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 42.17 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 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 licensee, 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. Except as provided in RCW 18.130.050(8), the presiding officer shall not vote on or make any final decision. 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. [1997 c 270 § 1; 1995 c 336 § 6; 1993 c 367 § 2.]

**18.130.098 Settlement—Disclosure—Conference.**

(1) The settlement process must be substantially uniform for licensees governed by disciplining authorities under this chapter. The disciplinary authorities may also use alternative dispute resolution to resolve complaints during adjudicative proceedings.

(2) Disclosure of the identity of reviewing disciplining authority members who participate in the settlement process is available to the respondent or his or her representative upon request.

(3) The settlement conference will occur only if a settlement is not achieved through written documents. The respondent will have the opportunity to conference either by phone or in person with the reviewing disciplining authority member if the respondent chooses. The respondent may also have his or her attorney conference either by phone or in person with the reviewing disciplining authority member without the respondent being present personally.

(4) If the respondent wants to meet in person with the reviewing disciplining authority member, he or she will travel to the reviewing disciplining authority member and have such a conference with a department representative in attendance either by phone or in person. [1995 c 336 § 7; 1994 sp.s. c 9 § 604.]

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

**18.130.100 Hearings—Adjudicative proceedings under chapter 34.05 RCW.** The procedures governing adjudicative proceedings before agencies under chapter 34.05 RCW, the Administrative Procedure Act, govern all hearings before the disciplining authority. The disciplining authority has, in addition to the powers and duties set forth in this chapter, all of the powers and duties under chapter 34.05 RCW, which include, without limitation, all powers relating to the administration of oaths, the receipt of evidence, the issuance and enforcing of subpoenas, and the taking of depositions. [1989 c 175 § 69; 1984 c 279 § 10.]

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

**18.130.110 Findings of fact—Order—Report.** (1) In the event of a finding of unprofessional conduct, the disciplining authority shall prepare and serve findings of fact and an order as provided in chapter 34.05 RCW, the Administrative Procedure Act. If the license holder or applicant is found to have not committed unprofessional conduct, the disciplining authority shall forthwith prepare and serve findings of fact and an order of dismissal of the charges, including public exoneration of the licensee or applicant. The findings of fact and order shall be retained by the disciplining authority as a permanent record.

(2) The disciplining authority shall report the issuance of statements of charges and final orders in cases processed by the disciplining authority to:

(a) The person or agency who brought to the disciplining authority's attention information which resulted in the initiation of the case;

(b) Appropriate organizations, public or private, which serve the professions;

(c) The public. Notification of the public shall include press releases to appropriate local news media and the major news wire services; and

(d) Counterpart licensing boards in other states, or associations of state licensing boards.

(3) This section shall not be construed to require the reporting of any information which is exempt from public disclosure under chapter 42.17 RCW. [1989 c 175 § 70; 1984 c 279 § 11.]

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

**18.130.120 Actions against license—Exception.** The department shall not issue any license to any person whose license has been denied, revoked, or suspended by the disciplining authority except in conformity with the terms and conditions of the certificate or order of denial, revocation, or suspension, or in conformity with any order of reinstatement issued by the disciplining authority, or in accordance with the final judgment in any proceeding for review instituted under this chapter. [1984 c 279 § 12.]

**18.130.125 License suspension—Nonpayment or default on educational loan or scholarship.** The department shall suspend the license of any person who has been certified by a lending agency and reported to the department for nonpayment or default on a federally or state-guaranteed educational loan or service-conditional scholarship. Prior to the suspension, the agency must provide the person an opportunity for a brief adjudicative proceeding under RCW 34.05.485 through 34.05.494 and issue a finding of nonpayment or default on a federally or state-guaranteed educational loan or service-conditional scholarship. The person's license shall not be reissued until the person provides the department a written release issued by the lending agency stating that the person is making payments on the loan in accordance with a repayment agreement approved by the lending agency. If the person has continued to meet all other requirements for licensure during the suspension, reinstatement shall be automatic upon receipt of the notice and payment of any reinstatement fee the department may impose. [1996 c 293 § 18.]

**Severability—**1996 c 293: See note following RCW 18.04.420.

**18.130.127 License suspension—Noncompliance with support order—Reissuance.** The secretary shall immediately suspend the license of any person subject to this chapter who has been certified by the department of social and health services as a person who is not in compliance with a support order or a residential or visitation order as provided in RCW 74.20A.320. [1997 c 58 § 830.]

**\*Reviser's note:** 1997 c 58 § 887 requiring a court to order certification of noncompliance with residential provisions of a court-ordered parenting plan was vetoed. Provisions ordering the department of social and health services to certify a responsible parent based on a court order to certify for noncompliance with residential provisions of a parenting plan were vetoed. See RCW 74.20A.320.

**Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—**1997 c 58: See RCW 74.08A.900 through 74.08A.904.

**Effective dates—Intent—1997 c 58:** See notes following RCW 74.20A.320.

**18.130.130 Orders—When effective—Stay.** An order pursuant to proceedings authorized by this chapter, after due notice and findings in accordance with this chapter and chapter 34.05 RCW, or an order of summary suspension entered under this chapter, shall take effect immediately upon its being served. The order, if appealed to the court, shall not be stayed pending the appeal unless the disciplining authority or court to which the appeal is taken enters an order staying the order of the disciplining authority, which stay shall provide for terms necessary to protect the public. [1986 c 259 § 7; 1984 c 279 § 13.]

**Severability—1986 c 259:** See note following RCW 18.130.010.

**18.130.140 Appeal.** An individual who has been disciplined or whose license has been denied by a disciplining authority may appeal the decision as provided in chapter 34.05 RCW. [1984 c 279 § 14.]

**18.130.150 Reinstatement.** A person whose license has been suspended or revoked under this chapter may petition the disciplining authority for reinstatement after an interval as determined by the disciplining authority in the order. The disciplining authority shall hold hearings on the petition and may deny the petition or may order reinstatement and impose terms and conditions as provided in RCW 18.130.160 and issue an order of reinstatement. The disciplining authority may require successful completion of an examination as a condition of reinstatement.

A person whose license has been suspended for non-compliance with a support order or a \*residential or visitation order under RCW 74.20A.320 may petition for reinstatement at any time by providing the secretary a release issued by the department of social and health services stating that the person is in compliance with the order. If the person has continued to meet all other requirements for reinstatement during the suspension, the secretary shall automatically reissue the person's license upon receipt of the release, and payment of a reinstatement fee, if any. [1997 c 58 § 831; 1984 c 279 § 15.]

**\*Reviser's note:** 1997 c 58 § 887 requiring a court to order certification of noncompliance with residential provisions of a court-ordered parenting plan was vetoed. Provisions ordering the department of social and health services to certify a responsible parent based on a court order to certify for noncompliance with residential provisions of a parenting plan were vetoed. See RCW 74.20A.320.

**Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58:** See RCW 74.08A.900 through 74.08A.904.

**Effective dates—Intent—1997 c 58:** See notes following RCW 74.20A.320.

**18.130.160 Finding of unprofessional conduct—Orders—Sanctions—Stay—Costs—Stipulations.** Upon a finding, after hearing, that a license holder or applicant has committed unprofessional conduct or is unable to practice with reasonable skill and safety due to a physical or mental condition, the disciplining authority may issue an order providing for one or any combination of the following:

- (1) Revocation of the license;

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- (2) Suspension of the license for a fixed or indefinite term;
- (3) Restriction or limitation of the practice;
- (4) Requiring the satisfactory completion of a specific program of remedial education or treatment;
- (5) The monitoring of the practice by a supervisor approved by the disciplining authority;
- (6) Censure or reprimand;
- (7) Compliance with conditions of probation for a designated period of time;
- (8) Payment of a fine for each violation of this chapter, not to exceed five thousand dollars per violation. Funds received shall be placed in the health professions account;
- (9) Denial of the license request;
- (10) Corrective action;
- (11) Refund of fees billed to and collected from the consumer.

Any of the actions under this section may be totally or partly stayed by the disciplining authority. In determining what action is appropriate, the disciplining authority must first consider what sanctions are necessary to protect or compensate the public. Only after such provisions have been made may the disciplining authority consider and include in the order requirements designed to rehabilitate the license holder or applicant. All costs associated with compliance with orders issued under this section are the obligation of the license holder or applicant.

The licensee or applicant may enter into a stipulated disposition of charges that includes one or more of the sanctions of this section, but only after a statement of charges has been issued and the licensee has been afforded the opportunity for a hearing and has elected on the record to forego such a hearing. The stipulation shall either contain one or more specific findings of unprofessional conduct or inability to practice, or a statement by the licensee acknowledging that evidence is sufficient to justify one or more specified findings of unprofessional conduct or inability to practice. The stipulation entered into pursuant to this subsection shall be considered formal disciplinary action for all purposes. [1993 c 367 § 6; 1986 c 259 § 8; 1984 c 279 § 16.]

**Severability—1986 c 259:** See note following RCW 18.130.010.

**18.130.165 Enforcement of fine.** Where an order for payment of a fine is made as a result of a hearing under RCW 18.130.100 or 18.130.190 and timely payment is not made as directed in the final order, the disciplining authority may enforce the order for payment in the superior court in the county in which the hearing was held. This right of enforcement shall be in addition to any other rights the disciplining authority may have as to any licensee ordered to pay a fine but shall not be construed to limit a licensee's ability to seek judicial review under RCW 18.130.140.

In any action for enforcement of an order of payment of a fine, the disciplining authority's order is conclusive proof of the validity of the order of payment of a fine and the terms of payment. [1993 c 367 § 20; 1987 c 150 § 4.]

**Severability—1987 c 150:** See RCW 18.122.901.

**18.130.170 Capacity of license holder to practice—Hearing—Mental or physical examination—Implied**

**consent.** (1) If the disciplining authority believes a license holder or applicant may be unable to practice with reasonable skill and safety to consumers by reason of any mental or physical condition, a statement of charges in the name of the disciplining authority shall be served on the license holder or applicant and notice shall also be issued providing an opportunity for a hearing. The hearing shall be limited to the sole issue of the capacity of the license holder or applicant to practice with reasonable skill and safety. If the disciplining authority determines that the license holder or applicant is unable to practice with reasonable skill and safety for one of the reasons stated in this subsection, the disciplining authority shall impose such sanctions under RCW 18.130.160 as is deemed necessary to protect the public.

(2)(a) In investigating or adjudicating a complaint or report that a license holder or applicant may be unable to practice with reasonable skill or safety by reason of any mental or physical condition, the disciplining authority may require a license holder or applicant to submit to a mental or physical examination by one or more licensed or certified health professionals designated by the disciplining authority. The license holder or applicant shall be provided written notice of the disciplining authority's intent to order a mental or physical examination, which notice shall include: (i) A statement of the specific conduct, event, or circumstances justifying an examination; (ii) a summary of the evidence supporting the disciplining authority's concern that the license holder or applicant may be unable to practice with reasonable skill and safety by reason of a mental or physical condition, and the grounds for believing such evidence to be credible and reliable; (iii) a statement of the nature, purpose, scope, and content of the intended examination; (iv) a statement that the license holder or applicant has the right to respond in writing within twenty days to challenge the disciplining authority's grounds for ordering an examination or to challenge the manner or form of the examination; and (v) a statement that if the license holder or applicant timely responds to the notice of intent, then the license holder or applicant will not be required to submit to the examination while the response is under consideration.

(b) Upon submission of a timely response to the notice of intent to order a mental or physical examination, the license holder or applicant shall have an opportunity to respond to or refute such an order by submission of evidence or written argument or both. The evidence and written argument supporting and opposing the mental or physical examination shall be reviewed by either a panel of the disciplining authority members who have not been involved with the allegations against the license holder or applicant or a neutral decision maker approved by the disciplining authority. The reviewing panel of the disciplining authority or the approved neutral decision maker may, in its discretion, ask for oral argument from the parties. The reviewing panel of the disciplining authority or the approved neutral decision maker shall prepare a written decision as to whether: There is reasonable cause to believe that the license holder or applicant may be unable to practice with reasonable skill and safety by reason of a mental or physical condition, or the manner or form of the mental or physical examination is appropriate, or both.

(c) Upon receipt by the disciplining authority of the written decision, or upon the failure of the license holder or applicant to timely respond to the notice of intent, the disciplining authority may issue an order requiring the license holder or applicant to undergo a mental or physical examination. All such mental or physical examinations shall be narrowly tailored to address only the alleged mental or physical condition and the ability of the license holder or applicant to practice with reasonable skill and safety. An order of the disciplining authority requiring the license holder or applicant to undergo a mental or physical examination is not a final order for purposes of appeal. The cost of the examinations ordered by the disciplining authority shall be paid out of the health professions account. In addition to any examinations ordered by the disciplining authority, the licensee may submit physical or mental examination reports from licensed or certified health professionals of the license holder's or applicant's choosing and expense.

(d) If the disciplining authority finds that a license holder or applicant has failed to submit to a properly ordered mental or physical examination, then the disciplining authority may order appropriate action or discipline under RCW 18.130.180(9), unless the failure was due to circumstances beyond the person's control. However, no such action or discipline may be imposed unless the license holder or applicant has had the notice and opportunity to challenge the disciplining authority's grounds for ordering the examination, to challenge the manner and form, to assert any other defenses, and to have such challenges or defenses considered by either a panel of the disciplining authority members who have not been involved with the allegations against the license holder or applicant or a neutral decision maker approved by the disciplining authority, as previously set forth in this section. Further, the action or discipline ordered by the disciplining authority shall not be more severe than a suspension of the license, certification, registration or application until such time as the license holder or applicant complies with the properly ordered mental or physical examination.

(e) Nothing in this section shall restrict the power of a disciplining authority to act in an emergency under RCW 34.05.422(4), 34.05.479, and 18.130.050(7).

(f) A determination by a court of competent jurisdiction that a license holder or applicant is mentally incompetent or mentally ill is presumptive evidence of the license holder's or applicant's inability to practice with reasonable skill and safety. An individual affected under this section shall at reasonable intervals be afforded an opportunity, at his or her expense, to demonstrate that the individual can resume competent practice with reasonable skill and safety to the consumer.

(3) For the purpose of subsection (2) of this section, an applicant or license holder governed by this chapter, by making application, practicing, or filing a license renewal, is deemed to have given consent to submit to a mental, physical, or psychological examination when directed in writing by the disciplining authority and further to have waived all objections to the admissibility or use of the examining health professional's testimony or examination reports by the disciplining authority on the ground that the testimony or reports constitute privileged communications.

[1995 c 336 § 8; 1987 c 150 § 6; 1986 c 259 § 9; 1984 c 279 § 17.]

Severability—1987 c 150: See RCW 18.122.901.

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

**18.130.172 Evidence summary and stipulations.** (1) Prior to serving a statement of charges under RCW 18.130.090 or 18.130.170, the disciplinary authority may furnish a statement of allegations to the licensee or applicant along with a detailed summary of the evidence relied upon to establish the allegations and a proposed stipulation for informal resolution of the allegations. These documents shall be exempt from public disclosure until such time as the allegations are resolved either by stipulation or otherwise.

(2) The disciplinary authority and the applicant or licensee may stipulate that the allegations may be disposed of informally in accordance with this subsection. The stipulation shall contain a statement of the facts leading to the filing of the complaint; the act or acts of unprofessional conduct [conduct] alleged to have been committed or the alleged basis for determining that the applicant or licensee is unable to practice with reasonable skill and safety; a statement that the stipulation is not to be construed as a finding of either unprofessional conduct or inability to practice; an acknowledgement that a finding of unprofessional conduct or inability to practice, if proven, constitutes grounds for discipline under this chapter; and an agreement on the part of the licensee or applicant that the sanctions set forth in RCW 18.130.160, except RCW 18.130.160 (1), (2), (6), and (8), may be imposed as part of the stipulation, except that no fine may be imposed but the licensee or applicant may agree to reimburse the disciplinary authority the costs of investigation and processing the complaint up to an amount not exceeding one thousand dollars per allegation; and an agreement on the part of the disciplinary authority to forego further disciplinary proceedings concerning the allegations. A stipulation entered into pursuant to this subsection shall not be considered formal disciplinary action.

(3) If the licensee or applicant declines to agree to disposition of the charges by means of a stipulation pursuant to subsection (2) of this section, the disciplinary authority may proceed to formal disciplinary action pursuant to RCW 18.130.090 or 18.130.170.

(4) Upon execution of a stipulation under subsection (2) of this section by both the licensee or applicant and the disciplinary authority, the complaint is deemed disposed of and shall become subject to public disclosure on the same basis and to the same extent as other records of the disciplinary authority. Should the licensee or applicant fail to pay any agreed reimbursement within thirty days of the date specified in the stipulation for payment, the disciplinary authority may seek collection of the amount agreed to be paid in the same manner as enforcement of a fine under RCW 18.130.165. [1993 c 367 § 7.]

**18.130.175 Voluntary substance abuse monitoring programs.** (1) In lieu of disciplinary action under RCW 18.130.160 and if the disciplining authority determines that the unprofessional conduct may be the result of substance abuse, the disciplining authority may refer the license holder

to a voluntary substance abuse monitoring program approved by the disciplining authority.

The cost of the treatment shall be the responsibility of the license holder, but the responsibility does not preclude payment by an employer, existing insurance coverage, or other sources. Primary alcoholism or other drug addiction treatment shall be provided by approved treatment programs under RCW 70.96A.020 or by any other provider approved by the entity or the commission. However, nothing shall prohibit the disciplining authority from approving additional services and programs as an adjunct to primary alcoholism or other drug addiction treatment. The disciplining authority may also approve the use of out-of-state programs. Referral of the license holder to the program shall be done only with the consent of the license holder. Referral to the program may also include probationary conditions for a designated period of time. If the license holder does not consent to be referred to the program or does not successfully complete the program, the disciplining authority may take appropriate action under RCW 18.130.160. The secretary shall adopt uniform rules for the evaluation by the disciplinary authority of a relapse or program violation on the part of a license holder in the substance abuse monitoring program. The evaluation shall encourage program participation with additional conditions, in lieu of disciplinary action, when the disciplinary authority determines that the license holder is able to continue to practice with reasonable skill and safety.

(2) In addition to approving substance abuse monitoring programs that may receive referrals from the disciplining authority, the disciplining authority may establish by rule requirements for participation of license holders who are not being investigated or monitored by the disciplining authority for substance abuse. License holders voluntarily participating in the approved programs without being referred by the disciplining authority shall not be subject to disciplinary action under RCW 18.130.160 for their substance abuse, and shall not have their participation made known to the disciplining authority, if they meet the requirements of this section and the program in which they are participating.

(3) The license holder shall sign a waiver allowing the program to release information to the disciplining authority if the licensee does not comply with the requirements of this section or is unable to practice with reasonable skill or safety. The substance abuse program shall report to the disciplining authority any license holder who fails to comply with the requirements of this section or the program or who, in the opinion of the program, is unable to practice with reasonable skill or safety. License holders shall report to the disciplining authority if they fail to comply with this section or do not complete the program's requirements. License holders may, upon the agreement of the program and disciplining authority, reenter the program if they have previously failed to comply with this section.

(4) The treatment and pretreatment records of license holders referred to or voluntarily participating in approved programs shall be confidential, shall be exempt from RCW 42.17.250 through 42.17.450, and shall not be subject to discovery by subpoena or admissible as evidence except for monitoring records reported to the disciplining authority for cause as defined in subsection (3) of this section. Monitoring records relating to license holders referred to the program by the disciplining authority or relating to license

holders reported to the disciplining authority by the program for cause, shall be released to the disciplining authority at the request of the disciplining authority. Records held by the disciplining authority under this section shall be exempt from RCW 42.17.250 through 42.17.450 and shall not be subject to discovery by subpoena except by the license holder.

(5) "Substance abuse," as used in this section, means the impairment, as determined by the disciplining authority, of a license holder's professional services by an addiction to, a dependency on, or the use of alcohol, legend drugs, or controlled substances.

(6) This section does not affect an employer's right or ability to make employment-related decisions regarding a license holder. This section does not restrict the authority of the disciplining authority to take disciplinary action for any other unprofessional conduct.

(7) A person who, in good faith, reports information or takes action in connection with this section is immune from civil liability for reporting information or taking the action.

(a) The immunity from civil liability provided by this section shall be liberally construed to accomplish the purposes of this section and the persons entitled to immunity shall include:

- (i) An approved monitoring treatment program;
- (ii) The professional association operating the program;
- (iii) Members, employees, or agents of the program or association;

(iv) Persons reporting a license holder as being possibly impaired or providing information about the license holder's impairment; and

(v) Professionals supervising or monitoring the course of the impaired license holder's treatment or rehabilitation.

(b) The courts are strongly encouraged to impose sanctions on clients and their attorneys whose allegations under this subsection are not made in good faith and are without either reasonable objective, substantive grounds, or both.

(c) The immunity provided in this section is in addition to any other immunity provided by law. [1998 c 132 § 10; 1993 c 367 § 3; 1991 c 3 § 270; 1988 c 247 § 2.]

**Finding—Intent—Severability—1998 c 132:** See notes following RCW 18.71.0195.

**Legislative intent—1988 c 247:** "Existing law does not provide for a program for rehabilitation of health professionals whose competency may be impaired due to the abuse of alcohol and other drugs.

It is the intent of the legislature that the disciplining authorities seek ways to identify and support the rehabilitation of health professionals whose practice or competency may be impaired due to the abuse of drugs or alcohol. The legislature intends that such health professionals be treated so that they can return to or continue to practice their profession in a way which safeguards the public. The legislature specifically intends that the disciplining authorities establish an alternative program to the traditional administrative proceedings against such health professionals." [1988 c 247 § 1.]

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

(1) The commission of any act involving moral turpitude, dishonesty, or corruption relating to the practice of the person's profession, whether the act constitutes a crime or not. If the act constitutes a crime, conviction in a criminal proceeding is not a condition precedent to disciplinary

action. Upon such a conviction, however, the judgment and sentence is conclusive evidence at the ensuing disciplinary hearing of the guilt of the license holder or applicant of the crime described in the indictment or information, and of the person's violation of the statute on which it is based. For the purposes of this section, conviction includes all instances in which a plea of guilty or nolo contendere is the basis for the conviction and all proceedings in which the sentence has been deferred or suspended. Nothing in this section abrogates rights guaranteed under chapter 9.96A RCW;

(2) Misrepresentation or concealment of a material fact in obtaining a license or in reinstatement thereof;

(3) All advertising which is false, fraudulent, or misleading;

(4) Incompetence, negligence, or malpractice which results in injury to a patient or which creates an unreasonable risk that a patient may be harmed. The 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;

(5) Suspension, revocation, or restriction of the individual's license to practice any health care profession by competent authority in any state, federal, or foreign jurisdiction, a certified copy of the order, stipulation, or agreement being conclusive evidence of the revocation, suspension, or restriction;

(6) The possession, use, prescription for use, or distribution of controlled substances or legend drugs in any way other than for legitimate or therapeutic purposes, diversion of controlled substances or legend drugs, the violation of any drug law, or prescribing controlled substances for oneself;

(7) Violation of any state or federal statute or administrative rule regulating the profession in question, including any statute or rule defining or establishing standards of patient care or professional conduct or practice;

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

(a) Not furnishing any papers or documents;

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

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

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

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

(10) Aiding or abetting an unlicensed person to practice when a license is required;

(11) Violations of rules established by any health agency;

(12) Practice beyond the scope of practice as defined by law or rule;

(13) Misrepresentation or fraud in any aspect of the conduct of the business or profession;

(14) Failure to adequately supervise auxiliary staff to the extent that the consumer's health or safety is at risk;

(15) Engaging in a profession involving contact with the public while suffering from a contagious or infectious disease involving serious risk to public health;

(16) Promotion for personal gain of any unnecessary or inefficacious drug, device, treatment, procedure, or service;

(17) Conviction of any gross misdemeanor or felony relating to the practice of the person's profession. For the purposes of this subsection, conviction includes all instances in which a plea of guilty or nolo contendere is the basis for conviction and all proceedings in which the sentence has been deferred or suspended. Nothing in this section abrogates rights guaranteed under chapter 9.96A RCW;

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

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

(20) The willful betrayal of a practitioner-patient privilege as recognized by law;

(21) Violation of chapter 19.68 RCW;

(22) Interference with an investigation or disciplinary proceeding by willful misrepresentation of facts before the disciplining authority or its authorized representative, or by the use of threats or harassment against any patient or witness to prevent them from providing evidence in a disciplinary proceeding or any other legal action, or by the use of financial inducements to any patient or witness to prevent or attempt to prevent him or her from providing evidence in a disciplinary proceeding;

(23) Current misuse of:

(a) Alcohol;

(b) Controlled substances; or

(c) Legend drugs;

(24) Abuse of a client or patient or sexual contact with a client or patient;

(25) Acceptance of more than a nominal gratuity, hospitality, or subsidy offered by a representative or vendor of medical or health-related products or services intended for patients, in contemplation of a sale or for use in research publishable in professional journals, where a conflict of interest is presented, as defined by rules of the disciplining authority, in consultation with the department, based on recognized professional ethical standards. [1995 c 336 § 9; 1993 c 367 § 22. Prior: 1991 c 332 § 34; 1991 c 215 § 3; 1989 c 270 § 33; 1986 c 259 § 10; 1984 c 279 § 18.]

Application to scope of practice—Captions not law—1991 c 332: See notes following RCW 18.130.010.

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

**18.130.185 Injunctive relief for violations of RCW 18.130.170 or 18.130.180.** If a person or business regulated by this chapter violates RCW 18.130.170 or 18.130.180, the attorney general, any prosecuting attorney, the secretary, the board, or any other person may maintain an action in the name of the state of Washington to enjoin the person from committing the violations. The injunction shall not relieve the offender from criminal prosecution, but the remedy by injunction shall be in addition to the liability of the offender

to criminal prosecution and disciplinary action. [1993 c 367 § 8; 1987 c 150 § 8; 1986 c 259 § 15.]

Severability—1987 c 150: See RCW 18.122.901.

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

**18.130.186 Voluntary substance abuse monitoring program—Content—License surcharge.** (1) To implement a substance abuse monitoring program for license holders specified under RCW 18.130.040, who are impaired by substance abuse, the disciplinary authority may enter into a contract with a voluntary substance abuse program under RCW 18.130.175. The program may include any or all of the following:

(a) Contracting with providers of treatment programs;

(b) Receiving and evaluating reports of suspected impairment from any source;

(c) Intervening in cases of verified impairment;

(d) Referring impaired license holders to treatment programs;

(e) Monitoring the treatment and rehabilitation of impaired license holders including those ordered by the disciplinary authority;

(f) Providing education, prevention of impairment, posttreatment monitoring, and support of rehabilitated impaired license holders; and

(g) Performing other activities as agreed upon by the disciplinary authority.

(2) A contract entered into under subsection (1) of this section may be financed by a surcharge on each license issuance or renewal to be collected by the department of health from the license holders of the same regulated health profession. These moneys shall be placed in the health professions account to be used solely for the implementation of the program. [1993 c 367 § 9; 1989 c 125 § 3.]

**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 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) 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. Each subsequent violation, whether alleged in the same or in subsequent prosecutions, is a class C felony. 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. [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.]

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.

**18.130.195 Violation of injunction—Penalty.** A person or business that violates an injunction issued under this chapter shall pay a civil penalty, as determined by the court, of not more than twenty-five thousand dollars, which shall be placed in the health professions account. For the

purpose of this section, the superior court issuing any injunction shall retain jurisdiction and the cause shall be continued, and in such cases the attorney general acting in the name of the state may petition for the recovery of civil penalties. [1987 c 150 § 5.]

Severability—1987 c 150: See RCW 18.122.901.

**18.130.200 Fraud or misrepresentation in obtaining or maintaining a license—Penalty.** A person who attempts to obtain, obtains, or attempts to maintain a license by willful misrepresentation or fraudulent representation is guilty of a gross misdemeanor. [1997 c 392 § 517; 1986 c 259 § 12; 1984 c 279 § 20.]

Short title—Findings—Construction—Conflict with federal requirements—Part headings and captions not law—1997 c 392: See notes following RCW 74.39A.009.

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

**18.130.210 Crime by license holder—Notice to attorney general or county prosecuting attorney.** If the disciplining authority determines or has cause to believe that a license holder has committed a crime, the disciplining authority, immediately subsequent to issuing findings of fact and a final order, shall notify the attorney general or the county prosecuting attorney in the county in which the act took place of the facts known to the disciplining authority. [1986 c 259 § 13; 1984 c 279 § 22.]

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

**18.130.250 Retired active license status.** The disciplining authority may adopt rules pursuant to this section authorizing a retired active license status. An individual credentialed by a disciplining authority regulated in the state under RCW 18.130.040, who is practicing only in emergent or intermittent circumstances as defined by rule established by the disciplining authority, may hold a retired active license at a reduced renewal fee established by the secretary under RCW 43.70.250. Such a license shall meet the continuing education or continued competency requirements, if any, established by the disciplining authority for renewals, and is subject to the provisions of this chapter. Individuals who have entered into retired status agreements with the disciplinary authority in any jurisdiction shall not qualify for a retired active license under this section. [1991 c 229 § 1.]

**18.130.270 Continuing competency pilot projects.** The disciplinary authorities are authorized to develop and require licensees' participation in continuing competency pilot projects for the purpose of developing flexible, cost-efficient, effective, and geographically accessible competency assurance methods. The secretary shall establish criteria for development of pilot projects and shall select the disciplinary authorities that will participate from among the professions requesting participation. The department shall administer the projects in mutual cooperation with the disciplinary authority and shall allot and administer the budget for each pilot project. The department shall report to the legislature in January of each odd-numbered year concerning the progress and findings of the projects and shall make recommendations

on the expansion of continued competency requirements to other licensed health professions.

Each disciplinary authority shall establish its pilot project in rule and may support the projects from a surcharge on each of the affected profession's license renewal in an amount established by the secretary. [1991 c 332 § 3.]

**Application to scope of practice—Captions not law—1991 c 332:** See notes following RCW 18.130.010.

**18.130.300 Immunity from liability.** (1) The secretary, members of the boards or commissions, or individuals acting on their behalf are immune from suit in any action, civil or criminal, based on any disciplinary proceedings or other official acts performed in the course of their duties.

(2) A voluntary substance abuse monitoring program or an impaired practitioner program approved by a disciplining authority, or individuals acting on their behalf, are immune from suit in a civil action based on any disciplinary proceedings or other official acts performed in the course of their duties. [1998 c 132 § 11; 1994 sp.s. c 9 § 605; 1993 c 367 § 10; 1984 c 279 § 21.]

**Finding—Intent—Severability—1998 c 132:** See notes following RCW 18.71.0195.

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

**18.130.310 Biennial reports—Format.** Subject to RCW 40.07.040, the disciplinary authority shall submit a biennial report to the legislature on its proceedings during the biennium, detailing the number of complaints made, investigated, and adjudicated and manner of disposition. The report may include recommendations for improving the disciplinary process, including proposed legislation. The department shall develop a uniform report format. [1989 1st ex.s. c 9 § 313; 1987 c 505 § 5; 1984 c 279 § 23.]

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

**18.130.340 Opiate therapy guidelines.** The secretary of health shall coordinate and assist the regulatory boards and commissions of the health professions with prescriptive authority in the development of uniform guidelines for addressing opiate therapy for acute pain, and chronic pain associated with cancer and other terminal diseases, or other chronic or intractable pain conditions. The purpose of the guidelines is to assure the provision of effective medical treatment in accordance with recognized national standards and consistent with requirements of the public health and safety. [1995 c 336 § 10.]

**18.130.350 Application—Use of records or exchange of information not affected.** This chapter does not affect the use of records, obtained from the secretary or the disciplining authorities, in any existing investigation or action by any state agency. Nor does this chapter limit any existing exchange of information between the secretary or the disciplining authorities and other state agencies. [1997 c 270, § 3.]

**18.130.900 Short title—Applicability.** (1) This chapter shall be known and cited as the uniform disciplinary act.

(2) This chapter applies to any conduct, acts, or conditions occurring on or after June 11, 1986.

(3) This chapter does not apply to or govern the construction of and disciplinary action for any conduct, acts, or conditions occurring prior to June 11, 1986. Such conduct, acts, or conditions must be construed and disciplinary action taken according to the provisions of law existing at the time of the occurrence in the same manner as if this chapter had not been enacted. [1986 c 259 § 14; 1984 c 279 § 24.]

**Severability—1986 c 259:** See note following RCW 18.130.010.

**18.130.901 Severability—1984 c 279.** 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. [1984 c 279 § 95.]

## Chapter 18.135

### HEALTH CARE ASSISTANTS

#### Sections

- 18.135.010 Practices authorized.
- 18.135.020 Definitions.
- 18.135.025 Rules—Legislative intent.
- 18.135.030 Requirements for certification—Rules.
- 18.135.040 Certification of health care assistants.
- 18.135.050 Certification by health care facility or practitioner—Roster—Recertification.
- 18.135.055 Registering an initial or continuing certification—Fees.
- 18.135.060 Conditions for performing authorized functions—Renal dialysis.
- 18.135.065 Delegation—Duties of delegator and delegatee.
- 18.135.070 Complaints—Violations—Investigations—Disciplinary action.
- 18.135.090 Performance of authorized functions.
- 18.135.100 Uniform Disciplinary Act.

*Health professions advisory committee: RCW 18.138.120.*

**18.135.010 Practices authorized.** It is in the public interest that limited authority to administer skin tests and subcutaneous, intradermal, intramuscular, and intravenous injections and to perform minor invasive procedures to withdraw blood in this state be granted to health care assistants who are not so authorized under existing licensing statutes, subject to such regulations as will assure the protection of the health and safety of the patient. [1984 c 281 § 1.]

**18.135.020 Definitions.** As used in this chapter:

- (1) "Secretary" means the secretary of health.
- (2) "Health care assistant" means an unlicensed person who assists a licensed health care practitioner in providing health care to patients pursuant to this chapter. However persons trained by a federally approved end-stage renal disease facility who perform end-stage renal dialysis are exempt from certification under this chapter.
- (3) "Health care practitioner" means:
  - (a) A physician licensed under chapter 18.71 RCW;