

## Discipline of Pharmacists & Other Licensees

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## Readings

- Chapter 18.64.160 and .165 RCW
- Chapter 18.130 RCW Uniform Disciplinary Act

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The intent of the investigative and disciplinary process is to provide quality protection of the public while also providing procedural due process to licensees through the timely resolution of complaints.

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## Jurisdiction

- The Board's authority to investigate complaints and take action against licensed individuals and business enterprises is set by statute. RCW 18.64.005.
- In order for the Board to take action against a licensee, the alleged conduct must be in violation of a statute or rule. (JURISDICTION)
- Examples within jurisdiction of Board include: Misfill, Diversion, Failure to Counsel, Failing inspections, Failing to keep records, etc.
- Examples not within jurisdiction include: Rudeness, Drug Pricing.

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## INFORMATION v. COMPLAINT

- Initial Information received by BOP
- Information sufficient to allege violation of law, **and**, within jurisdiction of BOP, becomes a **complaint**
- If no jurisdiction then may be sent to appropriate board or commission (e.g., RN, MD, DDS...)
- If insufficient info then it is not opened as a complaint by BOP

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## Requirement to Cooperate

- RCW 18.130.180(b) - A licensee is required to cooperate with an investigation by the board. includes the written statement.
- No 5th Amendment Right. This doesn't mean that you cannot assert the right, it means that the Board can make an inference of guilt from refusal to answer.
- May obtain legal representation at licensee's cost.

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## Confidentiality of Complainant

- RCW 43.70.075 - A person who complains about any health care provider is a "Whistleblower" and is entitled to have their confidentiality protected.
- If the identity of the complainant is essential to the investigation, the complainant must waive their right to confidentiality
- If complainant refuses to waive confidentiality, the investigation is closed. (e.g., Rx error)

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## NOTICE OF CORRECTION (NOC)

- Non-disciplinary  
Educational  
Cannot impose **any** sanctions  
Case Closed upon mailing of NOC  
Frequently used for Rx errors

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## STATEMENT OF CHARGES (SOC)

- Formal Discipline
- Wide range of sanctions, Reprimand to Suspension to Revocation
- If Licensee responds to SOC, final resolution either by settlement or hearing
- If licensee fails to respond or attend the hearing, case is resolved through default hearing.

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## Right to Board Hearing

- All licensees may reject a settlement offer and request a hearing before the Board.
- Hearings are conducted by rules set by the Administrative Procedure Act, RCW 34.05
- Health Law Judge (DoH attorney) makes legal rulings on evidence & motions, and Board makes the findings of fact. (i.e., whether conduct occurred, and conclusions of Law.)

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## Grounds for Discipline Pharmacists & Interns

- 18.64.160 RCW
- Board may take disciplinary action against any pharmacist or intern upon proof that he/she committed certain violations of law or rule.
- (Note this section does not specify what disciplinary action Board may take. See UDA)

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## “Proof”

- Beyond a reasonable doubt
  - Reasonable person has no doubt
- Clear and convincing evidence
  - Substantially more likely than not
- Preponderance of the evidence
  - More likely than not

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## Grounds for Discipline Pharmacists & Interns

- 18.64.160 RCW
  - 1. Got license thru
    - Fraud
    - Misrepresentation
    - Deceit
  - 2. Found by Court to be mentally incompetent (automatic suspension)

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## Grounds for Discipline

- 18.64.160 RCW
  - 3. Knowingly violated or permitted violation of ANY provision of state or federal law or rule governing drugs
  - (e.g., illegal use, possession, distribution, dispensing of drugs)
  - Includes all of chapters 18.64, 69 & Board rules

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## Grounds for Discipline

- 18.64.160 RCW
  - 4. Knowingly allowed unlicensed person to take charge of pharmacy or engage in practice of pharmacy
  - EXCEPT Interns & Pharmacy Techs may practice under supervision of licensed pharmacist

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## Grounds for Discipline

- 18.64.160 RCW
  - Compounded or dispensed a drug that contains more or less than the equivalent quantity of the ingredient(s) specified by the prescriber.
  - This is section of law used for Rx errors
  - HOWEVER, RPh can exercise professional judgment

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## Professional Judgment

- Pharmacists may adjust doses, add ingredients in compounding, dispense therapeutic equivalent products, use their judgment in interest of patient care.

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## Discipline of Firms

- 18.64.165 RCW
  - Discipline of Manufacturer, Wholesaler, pharmacy, shopkeeper, itinerant vendor, peddler, poison distributor, health care entity, precursor chemical distributor

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## Discipline of Firms

- 18.64.165 RCW
  - Board may refuse, suspend or revoke these licenses (Compare with RPh)
  - NOTE: Board may not fine firms because firms are NOT included in UDA

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## Discipline of Firms Grounds for Discipline

- 18.64.165 RCW
  - License procured thru
    - Fraud
    - Misrepresentation
    - Deceit
  - Violated or permitted employee to violate laws or rules OR
  - Convicted of a felony

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## Uniform Disciplinary Act 18.130 RCW

- Applies to ALL health professions
- Enacted in 1984 when all professions EXCEPT Pharmacy were in Dept. of Licensing
- Old disciplinary provisions varied widely
- DOH was created in 1989
- UDA amended to include Pharmacy in 1993

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## Uniform Disciplinary Act

- 18.130.050 Authority of Disciplinary Auth.
- 1) Rulemaking
- 2) Investigate Complaints & Hold hearings
- 3) Issue subpoenas
- 4) Take depositions, use discovery
- 5) Compel witnesses to attend hearings
- 6) Conduct practice reviews

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## Uniform Disciplinary Act

- 7) Take emergency action- summary suspension of license or restriction or limitation of licensee's practice pending proceedings
- 8) Use presiding officer or office of admin. hearings to conduct hearings (Board makes final decision)
- 9) Use board member to direct case BUT may not then participate in hearing.

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## Uniform Disciplinary Act

- 10) Enter into contracts for professional services for enforcement of chapter.
- 11) Contract for monitoring of probation (including WRAPP, MD Program, etc.)
- 12) Adopt standards of conduct/practice
- 13) Grant or deny license & impose sanctions for violations

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## Uniform Disciplinary Act

- 14) Designate individuals to sign subpoenas and statements of charges.
- 15) Establish panels of 3 or more members to perform any duty of the board.
- 16) Review or audit records of health facil. QA programs when licensees privileges or employment are terminated. Records MUST be made available. Records NOT subject to discovery by attorneys in lawsuits.

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## UDA, 18.130.060 RCW

- Secretary of Health Authority:
- Employ investigators & other staff
- Appoint pro tem members
- Establish fees for witnesses (experts)
- Conduct investigations & practice reviews at request of disciplinary auth.
- Recruit public members for boards
- Adopt rules in consultation with boards regarding reporting of reporting of convictions etc.

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## UDA, 18.130.065 Secretary's Rule Authority

- Secretary shall review and coordinate ALL proposed rules, interpretive statements, policy statements, and declaratory orders proposed by boards or commissions and report on findings within 30 days.

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## UDA, 18.130.070 Reporting Requirements

- Secretary SHALL adopt rules requiring reports to Discp. Auth from license holders that **another** license holder has been:
  - Convicted
  - Committed an act that = unprofessional conduct
  - Or may not be able to practice with reasonable skill or safety due to mental or physical condition\*
  - (\*May alternatively report to impaired practitioner program)
  - Impaired practitioner programs do not have to report.
  - You are immune from civil liability if you report someone.
- Also, License holders have to report on themselves if convictions, unprofessional conduct, or disqualification from the Medicare program.

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## UDA, 18.130.070 Reporting Requirements

- The above section was in effect until 7/1/08 then was replaced with similar language.
- Secretary is currently in process of rulemaking on this issue. Contact Board of Pharmacy to get on their rules email list.

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## Uniform Disciplinary Act

- 18.130.075 Temporary Practice Permits
- Boards shall issue temp. permits to qualified applicants.
- See WAC 246-863-035
  - Completed application, NABP Official App,
  - Fee, Good until 1st of month after next law exam (BUT now MPJE is offered daily so this rule needs to be changed.)
  - No extension if fail to appear or fail exam

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## Uniform Disciplinary Act

- 18.130.080 Unprofessional Conduct, Investigations, Immunity of Complainant
- Anyone may file a complaint
- Department will investigate
- MUST investigate if licensee is disqualified from Medicare or Medicaid
- If filed in GOOD FAITH complainant is immune from lawsuit by RPh or firm.

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## Uniform Disciplinary Act

- 18.130.085
- Communication with complainant
- 18.130.090
- Statement of Charges
  - Procedural Issues
- 18.130.095
- Secretary requires uniform procedural rules for all disciplinary authorities.
- 18.130.098 Settlements, etc.
  - More procedural stuff

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## Uniform Disciplinary Act

- 18.130.100 Hearings
- 18.130.110 Findings of Fact, Orders, & Reports to the public, other boards, national practitioner database, etc.
- (Important IF you ever get disciplined)
- 18.130.120 Actions against license
  - Keeps DoH from issuing a license to a disciplined person EXCEPT in accordance with disc. Auth. Order.

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## Uniform Disciplinary Act

- 18.130.125 Nonpayment or default on student loan or service-conditional scholarship.
- DoH shall suspend license if you are not current or in default on student loan and you can not get license back until you pay up! Also if agree to work for govt. for forgiveness of loans and quit, same suspension happens.

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## Uniform Disciplinary Act

- 18.130.127 Noncompliance with support order.
- Secretary MUST immediately suspend license if DSHS certifies that you are not in compliance with a support order or residential or visitation order.

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## Uniform Disciplinary Act

- 18.130.130 Board Orders - When Effective
- If you appeal an order to Board or to Court it remains in effect UNLESS the Board or Court enters an order staying the Board's order and provides terms to protect the public.
- 18.130.140 Board Orders - Appeal
- You may appeal in accordance with the Administrative Procedures Act (34.05 RCW) Usually you appeal to Superior Court in Thurston County but could appeal in your home county.

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## Uniform Disciplinary Act

- 18.130.150 Reinstatement
- If your license is suspended or revoked, you may petition the Board for reinstatement.
  - After interval determined by Board in original order
  - Board will hold hearing, may deny or may impose terms and conditions under which license may be reinstated.
- NOTE: Boards may not revoke for LIFE only for a specific term BUT they may impose all kinds of conditions for reinstatement.

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## Uniform Disciplinary Act

- 18.130.160 Finding of Unprof. Conduct
- What can the boards do?
  - 1) Revoke
  - 2) Suspend (specific time or indefinite)
  - 3) Restriction-limitation of practice
  - 4) Remedial education or treatment
  - 5) Monitoring of practice by a supervisor

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## Uniform Disciplinary Act

- 18.130.160 continued
- 6) Censure or reprimand
- 7) Conditions of Probation - specific time
- 8) Fine NTE \$ 5000 per violation
- 9) Denial of license request
- 10) Corrective action
- 11) Refund fees collected from patient
- 12) Surrender of license BUT report to Federal practitioner databank.

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## Uniform Disciplinary Act

- 18.130.165 Enforcement of Fine
- If you do not pay the fine ordered by the Board they can go to court to enforce it.

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## Uniform Disciplinary Act

- 18.130.170 Mental or Physical Examination  
Under this section, a board could require a licensee to undergo a mental or physical examination and suspend the license if he/she refuses.
- A King County Judge found this to be unconstitutional so now Boards must issue a statement of charges and offer a hearing on this issue and show that an exam is needed.
- NOTE: This is an extensive section. Try not to be found mentally incompetent to practice.

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## Uniform Disciplinary Act

- 18.130.172 Evidence Summary & Stipulations
- This section allows informal resolution of the allegations against the licensee can assess costs of the investigation but NO Fine.
- Actions under this section are NOT considered to be formal disciplinary action.
- If licensee declines the informal resolution, the case proceeds to the usual hearing, etc.

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## Uniform Disciplinary Act

- 18.130.175 Voluntary Substance Abuse monitoring programs.
- Boards may refer licensees to these programs instead of disciplining them.
- Persons may voluntarily enter the program and the Board need not be notified.
- Licensee MUST comply with program or be reported to the board for possible discipline.

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## Uniform Disciplinary Act

- 18.130.180 Unprofessional Conduct
- (Grounds for discipline by boards)
- 1) Moral turpitude, dishonesty, corruption relating to practice of profession.
  - If a crime, conviction is not necessary
  - if convicted that is conclusive evidence
  - convicted includes guilty plea and nolo contendere, Alford plea (I did not do it but a jury would probably find me guilty.)

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## Uniform Disciplinary Act

- 2) Misrepresentation or concealment of a material fact in obtaining license or reinstatement.
- 3) False, fraudulent or misleading advertising
- 4) Incompetence, negligence or malpractice involving injury or risk of harm.
- Non-traditional TX OK Unless risk of harm

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## Uniform Disciplinary Act

- 5) Licensure action by ANY other entity. certified copy of action is conclusive.
- 6) Possession, prescribing, distribution of CS or legend drugs for non-therapeutic purposes. Diversion of CS or Rx or prescribing CS for self. (OK for prescriber's family but problematic)
- 7) Violation of state or federal law or rule related to profession including standards of care

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## Uniform Disciplinary Act

- 8) Failure to Cooperate with Board by;
  - Not furnishing papers or documents
  - Not providing written explanation
  - Not responding to subpoenas of Board, even if you are not the accused person (e.g., witness)
- 9) Failure to comply with board order or stipulated agreement.

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## Uniform Disciplinary Act

- 10) Aiding or abetting unlicensed practice
  - e.g., letting Tech or Asst. fill Rx's in absence of RPh
- 11) Violations of rules of any health agency
  - e.g., Not reporting child abuse
- 12) Practice beyond scope of practice
- 13) Misrepresentation or fraud in any aspect of profession (e.g., Medicaid fraud)

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## Uniform Disciplinary Act

- 14) Failure to adequately supervise auxiliary staff to the extent that patient's health or safety is at risk.
- 15) Contact with public while having a contagious or infectious disease involving serious risk to public health.

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## Uniform Disciplinary Act

- 16) Promotion for personal gain of any unnecessary or inefficacious drug, device, treatment, procedure or service.
- 17) Conviction of gross misdemeanor or felony related to profession. Includes guilty or nolo pleas
- 18) Procuring, or aiding or abetting in the procuring of a criminal abortion.

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## Uniform Disciplinary Act

- 19) Offering to treat, cure, etc. disease by secret method, treatment, medicine, etc. OR refusing to divulge this information to board. (Mostly medical cases)
- 20) Willful betrayal of practitioner-patient privilege as recognized by law.

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## Uniform Disciplinary Act

- 21) Violation of 19.68 RCW Anti-kickback I
- can't get or give rebate or unearned discount
- lab, dental, medical, surgical, pharmacy
- Ownership OK if:
  - disclose ownership to patient
  - inform patient of alternative facilities and
  - assure that patient will not be treated differently

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## Uniform Disciplinary Act

- 22) Interference with and investigation or disciplinary proceeding by willful misrepresentation of facts before board OR its representative (e.g., Investigator) OR by use of threats or harassment against patient or witness to prevent them from providing evidence in disciplinary or legal action

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## Uniform Disciplinary Act

- 23) Current misuse of:
  - a) Alcohol;
  - b) Controlled substances; or
  - c) Legend drugs
- 24) Abuse of patient OR sexual contact with a patient (Note: All boards including pharmacy have adopted rules on the sexual contact issue.) See WAC 246-16-100

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## Uniform Disciplinary Act

24) *Sexual contact* with a patient

Does this apply to Pharmacists?

YES!

What should you do if you want to date a patient?

Refer Rx's to another RPh or Pharmacy

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## Uniform Disciplinary Act

- 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 sale or use in research publishable in journals where a conflict of interest is present as defined by rules of the board based upon recognized professional ethical standards. (NO rules adopted)

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# Uniform Disciplinary Act

- 18.130.190 Unlicensed Practice
- Secretary rather than Board gets to investigate and prosecute unlicensed practice of a health profession.
- 18.130.300 Immunity from Liability
- Secretary, Boards members, staff, etc are **IMMUNE** from liability for official acts performed in the course of their duties.

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# THE END



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