

B-Engrossed
Senate Bill 145

Ordered by the House June 7
Including Senate Amendments dated March 9 and House Amendments
dated June 7

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Governor Theodore R. Kulongoski for Board of Medical Examiners)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Changes name of Diversion Program Supervisory Council to Health Professionals Program Supervisory Council. Increases membership of council from five to seven members. Requires one member of council to be public member representing health care consumers. Expands program to include licensees with mental disorders. Requires personnel of program to report violation or suspected violation of Board of Medical Examiners rules concerning sexual violation and impropriety by licensee to board.

Modifies provisions regarding confidentiality of communications and records pertaining to diversion program administered by council. Provides that meetings of council regarding diversion program participants are confidential and not subject to public meetings law.

Takes effect January 1, 2009.

A BILL FOR AN ACT

1
2 Relating to diversion program for licensees of the Board of Medical Examiners; amending ORS
3 192.690, 677.615, 677.625, 677.635, 677.645, 677.655, 677.665 and 677.677; and prescribing an ef-
4 fective date.

5 **Be It Enacted by the People of the State of Oregon:**

6 **SECTION 1.** ORS 677.615 is amended to read:

7 677.615. (1) There is established a [*Diversion*] **Health Professionals** Program Supervisory
8 Council consisting of [*five*] **seven** members, **one of whom is a public member**, appointed by the
9 Board of Medical Examiners for the purpose of developing and implementing a diversion program
10 for **licensees who are regulated under this chapter and who are** chemically dependent [*licensees*
11 *regulated under this chapter*] **or have a mental disorder**. [*No*] Current **members of the board**
12 [*member*] or staff [*shall*] **may not** serve on the council.

13 (2) The term of office of each member **of the council** is two years, but a member serves at the
14 pleasure of the board. Before the expiration of the term of a member, the board shall appoint a
15 successor whose term begins July 1 next following. A member is eligible for reappointment. If there
16 is a vacancy for any cause, the board shall make an appointment to become immediately effective
17 for the unexpired term.

18 (3) The members of the council must be [*citizens*] **residents** of this state who are familiar with
19 the recognition, intervention, assessment and treatment of **persons who are** chemically dependent
20 [*persons*] **or who have a mental disorder. The public member of the council shall represent**
21 **health care consumers.**

22 (4) A member of the council is entitled to compensation and expenses as provided in ORS

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 292.495, except that the compensation for the time spent in performance of official duties shall be
2 the same as the compensation received by members of the Board of Medical Examiners.

3 (5) The council shall select one of its members as chairperson and another as vice chairperson,
4 for such terms and with duties and powers necessary for the performance of the functions of such
5 offices as the council determines.

6 (6) A majority of the members of the council constitutes a quorum for the transaction of busi-
7 ness.

8 **SECTION 2.** ORS 677.625 is amended to read:

9 677.625. (1) Subject to the approval of the Board of Medical Examiners, the [*Diversion*] **Health**
10 **Professionals** Program Supervisory Council shall appoint a medical director to serve at the pleas-
11 ure of the council. The medical director shall be an employee of the board.

12 (2) The medical director shall administer, under the control and supervision of the council, the
13 diversion program for **licensees who are** chemically dependent [*licensees*] **or who have a mental**
14 **disorder.**

15 (3) The board shall appoint such employees as may be necessary to carry out the duties of the
16 council, as assigned by the medical director.

17 **SECTION 3.** ORS 677.635 is amended to read:

18 677.635. The Board of Medical Examiners may enter into contracts to provide services for
19 **licensees who are** chemically dependent [*licensees*] **or who have a mental disorder** and may, in
20 accordance with ORS chapter 183, adopt rules necessary for the administration of a diversion pro-
21 gram for **licensees who are** chemically dependent [*licensees*] **or who have a mental disorder.**

22 **SECTION 4.** ORS 677.645 is amended to read:

23 677.645. (1) In addition to or in lieu of any disciplinary action under ORS 677.205, the Board of
24 Medical Examiners may refer a licensee who is chemically dependent **or who has a mental disor-**
25 **der** to a diversion program administered by the [*Diversion*] **Health Professionals** Program Super-
26 visory Council.

27 (2) The council **and the medical director** shall [*report to the board and provide*] **submit a**
28 **written report to the board containing** all pertinent information concerning any licensee who:

29 (a) Fails to complete the diversion program; [*or*]

30 (b) Fails to participate in the diversion program in good faith;

31 (c) **The council or the medical director has reason to believe may have engaged in or is**
32 **currently engaging in sexual violation that is in violation of rules adopted by the board; or**

33 (d) **The council or the medical director has reason to believe may have engaged in or is**
34 **currently engaging in sexual impropriety as defined by the rules adopted by the board and**
35 **who, in the judgment of the council or medical director, represents a potential danger to**
36 **patients.**

37 (3) **The council and the medical director may not disclose any information concerning a**
38 **licensee, other than the report required under subsection (2) of this section, without the**
39 **written consent of the licensee or subject to a valid court order.**

40 **SECTION 5.** ORS 677.655 is amended to read:

41 677.655. (1) All records **and meetings** of the [*Diversion*] **Health Professionals** Program Super-
42 visory Council are confidential and shall not be subject to public disclosure, nor shall the records
43 be admissible as evidence in any judicial, administrative, arbitration or mediation proceeding except
44 proceedings between the licensee or applicant and the Board of Medical Examiners. **Case reviews,**
45 **deliberations and communications regarding any participant in the program are exempt from**

1 **the provisions of ORS 192.610 to 192.690.**

2 (2) The members, employees, contractors and past or present clients of the council shall not be
3 subject to the disclosure requirements in ORS 677.415[, *nor shall they disclose information or be ex-*
4 *amined regarding any participant in the program*].

5 (3) Any licensee who in good faith voluntarily participates in an approved diversion program
6 and successfully completes the program shall not be subject to disciplinary investigation or sanc-
7 tions unless the licensee is suspected of a violation [*of this chapter*] **described in ORS 677.190**, [*other*
8 *than*] **except for** ORS 677.190 (1)(a), by the manner of obtaining or self-administration of intoxicants,
9 drugs or controlled substances or a violation [*of*] **described in** ORS 677.190 (7), **(13)**, **(20)** or (24).

10 (4) **Except as otherwise provided in ORS 677.615 to 677.677, disclosures of client records,**
11 **including but not limited to mental health records, by members, employees, contractors and**
12 **past or present clients of the council are subject to 42 C.F.R. part 2, sections 2.1 through**
13 **2.67. For the purposes of this subsection, medical health records and communications re-**
14 **garding mental health treatment shall be treated with the same confidentiality protections**
15 **as alcohol and drug abuse patient records under 42 C.F.R. part 2, sections 2.1 through 2.67.**

16 **SECTION 6.** ORS 677.665 is amended to read:

17 677.665. The Board of Medical Examiners, the [*Diversion*] **Health Professionals** Program Su-
18 pervisory Council, and their members, employees and contractors shall be immune from any civil
19 liability arising from good faith actions taken pursuant to ORS 677.615 to 677.677.

20 **SECTION 7.** ORS 677.677 is amended to read:

21 677.677. In addition to any other powers granted by ORS 677.615 to 677.677, the Board of Med-
22 ical Examiners may adopt necessary and proper rules for administration of ORS 677.615 to 677.677
23 including, but not limited to, establishing fees and charges to carry out its legal responsibilities,
24 subject to prior approval by the Oregon Department of Administrative Services and a report to the
25 Emergency Board prior to adopting the fees and charges. The fees and charges established under
26 this section shall not exceed the cost of administering the program of the [*Diversion*] **Health Pro-**
27 **fessionals** Program Supervisory Council, as authorized by the Legislative Assembly within the
28 board's budget, or as the budget may be modified by the Emergency Board, and shall be maintained
29 in an account separate from other funds of the board.

30 **SECTION 8.** ORS 192.690 is amended to read:

31 192.690. (1) ORS 192.610 to 192.690 do not apply to the deliberations of the State Board of Parole
32 and Post-Prison Supervision, the Psychiatric Security Review Board, state agencies conducting
33 hearings on contested cases in accordance with the provisions of ORS chapter 183, the review by
34 the Workers' Compensation Board or the Employment Appeals Board of similar hearings on con-
35 tested cases, meetings of the state lawyers assistance committee operating under the provisions of
36 ORS 9.568, **meetings of the Health Professionals Program Supervisory Council established**
37 **under ORS 677.615**, meetings of the personal and practice management assistance committees op-
38 erating under the provisions of ORS 9.568, the county multidisciplinary child abuse teams required
39 to review child abuse cases in accordance with the provisions of ORS 418.747, the child fatality re-
40 view teams required to review child fatalities in accordance with the provisions of ORS 418.785, the
41 peer review committees in accordance with the provisions of ORS 441.055, mediation conducted un-
42 der ORS 36.250 to 36.270, any judicial proceeding, meetings of the Oregon Health and Science Uni-
43 versity Board of Directors or its designated committee regarding candidates for the position of
44 president of the university or regarding sensitive business, financial or commercial matters of the
45 university not customarily provided to competitors related to financings, mergers, acquisitions or

1 joint ventures or related to the sale or other disposition of, or substantial change in use of, signif-
2 icant real or personal property, or related to health system strategies, or to Oregon Health and
3 Science University faculty or staff committee meetings.

4 (2) Because of the grave risk to public health and safety that would be posed by misappropri-
5 ation or misapplication of information considered during such review and approval, ORS 192.610 to
6 192.690 shall not apply to review and approval of security programs by the Energy Facility Siting
7 Council pursuant to ORS 469.530.

8 **SECTION 9. This 2007 Act takes effect on January 1, 2009.**

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