

Enrolled
Senate Bill 145

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)

CHAPTER

AN ACT

Relating to diversion program for licensees of the Board of Medical Examiners; amending ORS 192.690, 677.615, 677.625, 677.635, 677.645, 677.655, 677.665 and 677.677; and prescribing an effective date.

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

SECTION 1. ORS 677.615 is amended to read:

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

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

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

(4) A member of the council is entitled to compensation and expenses as provided in ORS 292.495, except that the compensation for the time spent in performance of official duties shall be the same as the compensation received by members of the Board of Medical Examiners.

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

(6) A majority of the members of the council constitutes a quorum for the transaction of business.

SECTION 2. ORS 677.625 is amended to read:

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

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

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

SECTION 3. ORS 677.635 is amended to read:

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

SECTION 4. ORS 677.645 is amended to read:

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

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

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

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

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

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

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

SECTION 5. ORS 677.655 is amended to read:

677.655. (1) All records **and meetings** of the [*Diversion*] **Health Professionals** Program Supervisory Council are confidential and shall not be subject to public disclosure, nor shall the records be admissible as evidence in any judicial, administrative, arbitration or mediation proceeding except proceedings between the licensee or applicant and the Board of Medical Examiners. **Case reviews, deliberations and communications regarding any participant in the program are exempt from the provisions of ORS 192.610 to 192.690.**

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

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

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

SECTION 6. ORS 677.665 is amended to read:

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

SECTION 7. ORS 677.677 is amended to read:

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

SECTION 8. ORS 192.690 is amended to read:

192.690. (1) ORS 192.610 to 192.690 do not apply to the deliberations of the State Board of Parole and Post-Prison Supervision, the Psychiatric Security Review Board, state agencies conducting hearings on contested cases in accordance with the provisions of ORS chapter 183, the review by the Workers' Compensation Board or the Employment Appeals Board of similar hearings on contested cases, meetings of the state lawyers assistance committee operating under the provisions of ORS 9.568, **meetings of the Health Professionals Program Supervisory Council established under ORS 677.615**, meetings of the personal and practice management assistance committees operating under the provisions of ORS 9.568, the county multidisciplinary child abuse teams required to review child abuse cases in accordance with the provisions of ORS 418.747, the child fatality review teams required to review child fatalities in accordance with the provisions of ORS 418.785, the peer review committees in accordance with the provisions of ORS 441.055, mediation conducted under ORS 36.250 to 36.270, any judicial proceeding, meetings of the Oregon Health and Science University Board of Directors or its designated committee regarding candidates for the position of president of the university or regarding sensitive business, financial or commercial matters of the university not customarily provided to competitors related to financings, mergers, acquisitions or joint ventures or related to the sale or other disposition of, or substantial change in use of, significant real or personal property, or related to health system strategies, or to Oregon Health and Science University faculty or staff committee meetings.

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

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

Passed by Senate March 19, 2007

Repassed by Senate June 15, 2007

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Secretary of Senate

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President of Senate

Passed by House June 12, 2007

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Speaker of House

Received by Governor:

.....M,....., 2007

Approved:

.....M,....., 2007

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Governor

Filed in Office of Secretary of State:

.....M,....., 2007

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Secretary of State