

A-Engrossed Senate Bill 337

Ordered by the Senate April 25
Including Senate Amendments dated April 25

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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.

[Defines "insurer" as any person that defends, indemnifies insured against or makes payment in response to claim for professional negligence. Defines certain persons within meaning of "insured" for purposes of claim reporting requirement. Expands requirement for reporting professional negligence claims to include public bodies and certain other insurers.] **Modifies provisions and requirements relating to notice of professional negligence claims to health professional regulatory boards and to subsequent actions of boards.** Specifies that reporting requirement continues to apply to public body if public body is substituted in place of insured as defendant in claim of alleged professional negligence.

Modifies provisions relating to reports of medical incompetence to Board of Medical Examiners. Imposes civil penalty of not more than \$10,000 on health care facilities that fail to report official action regarding medical staff incompetence, unprofessional or dishonorable conduct, or impairment.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to reports to health professional regulatory boards; creating new provisions; amending ORS
3 30.265, 677.205, 677.415 and 742.400; and declaring an emergency.

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

5 **SECTION 1.** ORS 742.400 is amended to read:

6 742.400. *[(1) As used in this section, "claim" means:]*

7 *[(a) A written request for payment for injury alleged to have been caused by professional negligence*
8 *that is made by or on behalf of the injured person to an insurer; or]*

9 *[(b) A written notification to an insurer by an insured that a person has requested payment from*
10 *the insured for injury alleged to have been caused by professional negligence.]*

11 *[(2) Any insurer that issues or underwrites professional liability insurance in this state to any*
12 *physician or podiatric physician and surgeon licensed by the Board of Medical Examiners for the State*
13 *of Oregon, to any optometrist registered by the Oregon Board of Optometry, to any dentist or dental*
14 *hygienist licensed by the Oregon Board of Dentistry or to any naturopath licensed by the Board of*
15 *Naturopathic Examiners shall report any claim against the insured for alleged professional negligence*
16 *to the appropriate licensing board within 30 days after receiving notice of the claim from the insured*
17 *or any other person.]*

18 *[(3) The report required by subsection (2) of this section shall be kept confidential by all persons*
19 *who make or receive it until the case is settled or closed and shall include:]*

20 *[(a) The name of the insured;]*

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 ***[(b) The name of the person making the claim;]***

2 ***[(c) The reason or reasons for which the claim is made; and]***

3 ***[(d) Any additional information the Director of the Department of Consumer and Business Services***
4 ***considers necessary.]***

5 ***[(4) Any insurer required to report to a board under this section shall also be required to advise***
6 ***the appropriate licensing board of any settlements, awards or judgments against a physician,***
7 ***optometrist, dentist or dental hygienist or naturopath within 30 days after the date of the settlement,***
8 ***award or judgment.]***

9 ***[(5) The appropriate board shall provide copies of all reports required by subsections (2) and (4)***
10 ***of this section to each health care facility licensed under ORS 441.015 to 441.087, 441.525 to 441.595,***
11 ***441.815, 441.820, 441.990, 442.342, 442.344 and 442.400 to 442.463 that employs or grants staff privileges***
12 ***to the person against whom the claim was filed.]***

13 **(1) As used in this section:**

14 **(a) “Claim” means a written demand for payment from or on behalf of a covered practi-**
15 **tioner for an injury alleged to have been caused by professional negligence that is made in**
16 **a complaint filed with a court of appropriate jurisdiction.**

17 **(b) “Covered practitioner” means a physician, podiatric physician and surgeon, physician**
18 **assistant, nurse practitioner, optometrist, dentist, dental hygienist or naturopath.**

19 **(c) “Disposition of a claim” means:**

20 **(A) A judgment or award against the covered practitioner by a court, a jury or an**
21 **arbitrator;**

22 **(B) A withdrawal or dismissal of the claim; or**

23 **(C) A settlement of the claim.**

24 **(d) “Reporter” means:**

25 **(A) A primary insurer;**

26 **(B) A public body required to defend, save harmless and indemnify an officer, employee**
27 **or agent of the public body under ORS 30.260 to 30.300;**

28 **(C) An entity that self-insures or indemnifies for claims alleging professional negligence**
29 **on the part of a covered practitioner; or**

30 **(D) A health maintenance organization as defined in ORS 750.005.**

31 **(2) Within 30 days after receiving notice of a claim, a reporter shall report the claim to**
32 **the appropriate board, as follows:**

33 **(a) The Board of Medical Examiners if the covered practitioner is a physician, podiatric**
34 **physician and surgeon or physician assistant;**

35 **(b) The Oregon State Board of Nursing if the covered practitioner is a nurse practitioner;**

36 **(c) The Oregon Board of Optometry if the covered practitioner is an optometrist;**

37 **(d) The Oregon Board of Dentistry if the covered practitioner is a dentist or dental**
38 **hygienist; or**

39 **(e) The Board of Naturopathic Examiners if the covered practitioner is a naturopath.**

40 **(3) The report required under subsection (2) of this section shall include:**

41 **(a) The name of the covered practitioner;**

42 **(b) The name of the person that filed the claim;**

43 **(c) The date on which the claim was filed; and**

44 **(d) The reason or reasons for the claim, except that the report may not disclose any data**
45 **that is privileged under ORS 41.675.**

1 (4) Within 30 days after the date of an action taken in disposition of a claim, a reporter
2 shall notify the appropriate board identified in subsection (2) of this section of the disposi-
3 tion.

4 (5)(a) A board that receives a report of a claim under this section shall keep the report
5 confidential and may not publicly disclose or publish any information about the claim if the
6 disposition of the claim does not result in a money judgment, an award or a settlement that
7 involves a payment to the claimant. The board shall withdraw from publication any record
8 based on a reported claim against a covered practitioner if the board does not receive an-
9 other report of a claim against the practitioner within four years after the date reported
10 under subsection (3)(c) of this section.

11 (b) If a board discloses information about a claim that is the subject of a report received
12 under this section, the board shall indicate in the disclosure whether the claim resulted in
13 a judicial finding or an admission of liability. A board may not publicly disclose or publish
14 any allegations or factual assertions included in the claim unless the complaint resulted in
15 a judicial finding or an admission of liability. For purposes of this paragraph, “judicial
16 finding” means a finding of liability by a court, a jury or an arbitrator.

17 (6) A board that receives a report under this section shall provide copies of the report
18 to each health care facility licensed under ORS 441.015 to 441.087, 441.525 to 441.595, 441.815,
19 441.820, 441.990, 442.342, 442.344 and 442.400 to 442.463 that employs or grants staff privileges
20 to the covered practitioner.

21 (7) A person that reports in good faith concerning any matter required to be reported
22 under this section is immune from civil liability by reason of making the report.

23 **SECTION 2.** ORS 677.415 is amended to read:

24 677.415. (1) As used in this section:

25 (a) “Health care facility” means a facility licensed under ORS 441.015 to 441.087.

26 (b) “Official action[, *incident or event*]” means a restriction, limitation, loss or denial of privi-
27 leges of a licensee to practice medicine, **or** any formal action taken against a licensee by a gov-
28 ernment agency or a health care facility based on a finding of medical incompetence, unprofessional
29 conduct or licensee impairment[, *or the withdrawal by a licensee from the practice of medicine or*
30 *podiatry*].

31 (2) The Board of Medical Examiners on *[its]* **the board’s** own motion may investigate any evi-
32 dence that appears to show that a licensee licensed by the board is or may be medically incompetent
33 or is or may be guilty of unprofessional or dishonorable conduct or is or may be an impaired
34 licensee unable safely to engage in the practice of medicine or podiatry.

35 (3) A licensee licensed by the Board **of Medical Examiners**, the Oregon Medical Association,
36 Inc., or any component society thereof, the Osteopathic Physicians and Surgeons of Oregon, Inc.
37 or the Oregon Podiatric Medical Association shall report within 10 working days, and any other
38 person may report, to the board any information such licensee, association, society or person may
39 have that appears to show that a licensee is or may be medically incompetent or is or may be guilty
40 of unprofessional or dishonorable conduct or is or may be an impaired licensee unable safely to
41 engage in the practice of medicine or podiatry. However, a licensee who is treating another licensee
42 for a mental disability has a duty to report within 10 working days the licensee patient unless, in
43 the opinion of the treating licensee, the patient is not impaired.

44 (4) A licensee shall self-report within 10 working days any official action[, *incident or event*]
45 taken against the licensee.

1 (5) A health care facility shall report to the Board of Medical Examiners any official action[,
2 *incident or event*] taken against a licensee within 10 business days of the date of the official
3 action[, *incident or event*].

4 (6) A licensee's voluntary **withdrawal from the practice of medicine or podiatry, voluntary**
5 **resignation from the staff of a health care [institution] facility** or voluntary limitation of the
6 licensee's staff privileges at such [*an institution*] **a health care facility** shall be promptly reported
7 to the Board of **Medical Examiners** by the [*institution*] **health care facility** and the licensee if
8 [*that*] **the licensee's voluntary** action occurs while the licensee is under investigation by the [*in-*
9 *stitution*] **health care facility** or a committee thereof for any reason related to possible medical in-
10 competence, unprofessional conduct or mental or physical impairment.

11 (7)(a) **A report made in accordance with subsection (3) of this section shall contain:**

12 (A) **The name, title, address and telephone number of the person making the report; and**

13 (B) **Information that appears to show that a licensee is or may be medically incompetent,**
14 **is or may be guilty of unprofessional or dishonorable conduct or is or may be an impaired**
15 **licensee unable safely to engage in the practice of medicine or podiatry.**

16 (b) **The Board of Medical Examiners may not require in a report made in accordance with**
17 **subsection (5) or (6) of this section more than:**

18 (A) **The name, title, address and telephone number of the licensee making the report or**
19 **the name, address and telephone number of the health care facility making the report;**

20 (B) **The date of an official action taken against the licensee or the licensee's voluntary**
21 **action under subsection (6) of this section; and**

22 (C) **A description of the official action or the licensee's voluntary action, as appropriate**
23 **to the report, including:**

24 (i) **The specific restriction, limitation, suspension, loss or denial of the licensee's medical**
25 **staff privileges and the effective date or term of the restriction, limitation, suspension, loss**
26 **or denial; or**

27 (ii) **The fact that the licensee has voluntarily withdrawn from the practice of medicine**
28 **or podiatry, voluntarily resigned from the staff of a health care facility or voluntarily limited**
29 **the licensee's privileges at a health care facility and the effective date of the withdrawal,**
30 **resignation or limitation.**

31 (c) **The Board of Medical Examiners may not require in a report made in accordance with**
32 **subsection (4) of this section more than:**

33 (A) **The name, title, address and telephone number of the licensee making the report; and**

34 (B) **The specific restriction, limitation, suspension, loss or denial of the licensee's staff**
35 **privileges and the effective date or term of the restriction, limitation, suspension, loss or**
36 **denial.**

37 (8) **A report made in accordance with this section may not include any data that is**
38 **privileged under ORS 41.675.**

39 [(7)] (9) If, in the opinion of the Board of **Medical Examiners**, it appears that information pro-
40 vided to it under this section is or may be true, the board may order an informal interview with the
41 licensee subject to the notice requirement of ORS 677.320.

42 (10)(a) **A health care facility's failure to report an official action as required under sub-**
43 **section (5) of this section constitutes a violation of this section. The health care facility is**
44 **subject to a penalty of not more than \$10,000 for each violation. The Board of Medical Ex-**
45 **aminers may impose the penalty in accordance with ORS 183.745 and, in addition to the**

1 **penalty, may assess reasonable costs the board incurs in enforcing the requirements of this**
2 **section against the health care facility if the enforcement results in the imposition of a civil**
3 **penalty.**

4 **(b) The Attorney General may bring an action in the name of the State of Oregon in a**
5 **court of appropriate jurisdiction to recover a civil penalty and costs assessed under this**
6 **subsection.**

7 **(c) A civil penalty assessed or recovered in accordance with this subsection shall be paid**
8 **to the State Treasury and the State Treasurer shall credit the amount of the payment to the**
9 **Rural Health Services Fund established under ORS 442.570.**

10 [(8)] (11) A person who reports in good faith to the Board of Medical Examiners as required by
11 this section is immune from civil liability by reason of making the report.

12 **SECTION 3.** ORS 677.205 is amended to read:

13 677.205. (1) The Board of Medical Examiners for the State of Oregon may discipline as provided
14 in this section any person licensed, registered or certified under this chapter who has:

15 (a) Admitted the facts of a complaint filed in accordance with ORS 677.200 (1) alleging facts
16 which establish that such person is in violation of one or more of the grounds for suspension or
17 revocation of a license as set forth in ORS 677.190;

18 (b) Been found to be in violation of one or more of the grounds for disciplinary action of a
19 licensee as set forth in this chapter; [or]

20 (c) Had an automatic license suspension as provided in ORS 677.225[.]; **or**

21 **(d) Failed to make a report as required under ORS 677.415.**

22 (2) In disciplining a licensee as authorized by subsection (1) of this section, the board may use
23 any or all of the following methods:

24 (a) Suspend judgment.

25 (b) Place the licensee on probation.

26 (c) Suspend the license.

27 (d) Revoke the license.

28 (e) Place limitations on the license.

29 (f) Take such other disciplinary action as the board in its discretion finds proper, including as-
30 sessment of the costs of the disciplinary proceedings as a civil penalty or assessment of a civil
31 penalty not to exceed [,\$5,000] **\$10,000**, or both.

32 (3) In addition to the action authorized by subsection (2) of this section, the board may tempo-
33 rarily suspend a license without a hearing, simultaneously with the commencement of proceedings
34 under ORS 677.200 if the board finds that evidence in its possession indicates that a continuation
35 in practice of the licensee constitutes an immediate danger to the public.

36 (4) If the board places any licensee on probation as set forth in subsection (2)(b) of this section,
37 the board may determine, and may at any time modify, the conditions of the probation and may in-
38 clude among them any reasonable condition for the purpose of protection of the public or for the
39 purpose of the rehabilitation of the probationer, or both. Upon expiration of the term of probation,
40 further proceedings shall be abated if the licensee has complied with the terms of the probation.

41 (5) If a license issued under this chapter is suspended, the holder of the license may not practice
42 during the term of suspension. Upon the expiration of the term of suspension, the license shall be
43 reinstated by the board if the conditions for which the license was suspended no longer exist.

44 (6) The board shall enter each case of disciplinary action on its records.

45 (7) Civil penalties under this section shall be imposed as provided in ORS 183.745.

1 **SECTION 4.** ORS 30.265 is amended to read:

2 30.265. (1) Subject to the limitations of ORS 30.260 to 30.300, every public body is subject to
3 action or suit for its torts and those of its officers, employees and agents acting within the scope
4 of their employment or duties, whether arising out of a governmental or proprietary function or
5 while operating a motor vehicle in a ridesharing arrangement authorized under ORS 276.598. The
6 sole cause of action for any tort of officers, employees or agents of a public body acting within the
7 scope of their employment or duties and eligible for representation and indemnification under ORS
8 30.285 or 30.287 shall be an action against the public body only. The remedy provided by ORS 30.260
9 to 30.300 is exclusive of any other action or suit against any such officer, employee or agent of a
10 public body whose act or omission within the scope of the officer's, employee's or agent's employ-
11 ment or duties gives rise to the action or suit. No other form of civil action or suit shall be per-
12 mitted. If an action or suit is filed against an officer, employee or agent of a public body, on
13 appropriate motion the public body shall be substituted as the only defendant. **Substitution of the**
14 **public body as the defendant does not exempt the public body from making any report re-**
15 **quired under ORS 742.400.**

16 (2) Every public body is immune from liability for any claim for injury to or death of any person
17 or injury to property resulting from an act or omission of an officer, employee or agent of a public
18 body when such officer, employee or agent is immune from liability.

19 (3) Every public body and its officers, employees and agents acting within the scope of their
20 employment or duties, or while operating a motor vehicle in a ridesharing arrangement authorized
21 under ORS 276.598, are immune from liability for:

22 (a) Any claim for injury to or death of any person covered by any workers' compensation law.

23 (b) Any claim in connection with the assessment and collection of taxes.

24 (c) Any claim based upon the performance of or the failure to exercise or perform a discretion-
25 ary function or duty, whether or not the discretion is abused.

26 (d) Any claim that is limited or barred by the provisions of any other statute, including but not
27 limited to any statute of ultimate repose.

28 (e) Any claim arising out of riot, civil commotion or mob action or out of any act or omission
29 in connection with the prevention of any of the foregoing.

30 (f) Any claim arising out of an act done or omitted under apparent authority of a law, resolution,
31 rule or regulation that is unconstitutional, invalid or inapplicable except to the extent that they
32 would have been liable had the law, resolution, rule or regulation been constitutional, valid and
33 applicable, unless such act was done or omitted in bad faith or with malice.

34 (4) Subsection (1) of this section applies to any action of any officer, employee or agent of the
35 state relating to a nuclear incident, whether or not the officer, employee or agent is acting within
36 the scope of employment, and provided the nuclear incident is covered by an insurance or indemnity
37 agreement under 42 U.S.C. 2210.

38 (5) Subsection (3)(c) of this section does not apply to any discretionary act that is found to be
39 the cause or partial cause of a nuclear incident covered by an insurance or indemnity agreement
40 under the provisions of 42 U.S.C. 2210, including but not limited to road design and route selection.

41 **SECTION 5. (1) The amendments to ORS 742.400 by section 1 of this 2007 Act apply to**
42 **claims received on or after the effective date of this 2007 Act.**

43 **(2) The amendments to ORS 677.205 and 677.415 by sections 2 and 3 of this 2007 Act apply**
44 **to health care facilities licensed under ORS 441.015 to 441.087, to licensees licensed by the**
45 **Board of Medical Examiners, the Oregon Medical Association, Inc. or any component society**

1 **thereof, the Osteopathic Physicians and Surgeons of Oregon, Inc. or the Oregon Podiatric**
2 **Medical Association on or after the effective date of this 2007 Act and to any person licensed,**
3 **registered or certified under ORS chapter 677 on or after the effective date of this 2007 Act.**

4 **(3) The amendments to ORS 30.265 by section 4 of this 2007 Act apply to public bodies on**
5 **and after the effective date of this 2007 Act.**

6 **SECTION 6. This 2007 Act being necessary for the immediate preservation of the public**
7 **peace, health and safety, an emergency is declared to exist, and this 2007 Act takes effect**
8 **on its passage.**

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