

## SENATE AMENDMENTS TO SENATE BILL 337

By COMMITTEE ON HEALTH POLICY AND PUBLIC AFFAIRS

April 25

- 1 On page 1 of the printed bill, line 3, after “30.265” insert “, 677.205, 677.415”.
- 2 Delete lines 5 through 27 and insert:
- 3 **“SECTION 1.** ORS 742.400 is amended to read:
- 4 “742.400. *[(1) As used in this section, ‘claim’ means:]*
- 5 *“[(a) A written request for payment for injury alleged to have been caused by professional*
- 6 *negligence that is made by or on behalf of the injured person to an insurer; or]*
- 7 *“[(b) A written notification to an insurer by an insured that a person has requested payment from*
- 8 *the insured for injury alleged to have been caused by professional negligence.]*
- 9 *“[(2) Any insurer that issues or underwrites professional liability insurance in this state to any*
- 10 *physician or podiatric physician and surgeon licensed by the Board of Medical Examiners for the State*
- 11 *of Oregon, to any optometrist registered by the Oregon Board of Optometry, to any dentist or dental*
- 12 *hygienist licensed by the Oregon Board of Dentistry or to any naturopath licensed by the Board of*
- 13 *Naturopathic Examiners shall report any claim against the insured for alleged professional negligence*
- 14 *to the appropriate licensing board within 30 days after receiving notice of the claim from the insured*
- 15 *or any other person.]*
- 16 *“[(3) The report required by subsection (2) of this section shall be kept confidential by all persons*
- 17 *who make or receive it until the case is settled or closed and shall include:]*
- 18 *“[(a) The name of the insured;]*
- 19 *“[(b) The name of the person making the claim;]*
- 20 *“[(c) The reason or reasons for which the claim is made; and]*
- 21 *“[(d) Any additional information the Director of the Department of Consumer and Business Ser-*
- 22 *vices considers necessary.]*
- 23 *“[(4) Any insurer required to report to a board under this section shall also be required to advise*
- 24 *the appropriate licensing board of any settlements, awards or judgments against a physician,*
- 25 *optometrist, dentist or dental hygienist or naturopath within 30 days after the date of the settlement,*
- 26 *award or judgment.]*
- 27 *“[(5) The appropriate board shall provide copies of all reports required by subsections (2) and (4)*
- 28 *of this section to each health care facility licensed under ORS 441.015 to 441.087, 441.525 to 441.595,*
- 29 *441.815, 441.820, 441.990, 442.342, 442.344 and 442.400 to 442.463 that employs or grants staff privileges*
- 30 *to the person against whom the claim was filed.]*
- 31 **“(1) As used in this section:**
- 32 **“(a) ‘Claim’ means a written demand for payment from or on behalf of a covered practi-**
- 33 **tioner for an injury alleged to have been caused by professional negligence that is made in**
- 34 **a complaint filed with a court of appropriate jurisdiction.**
- 35 **“(b) ‘Covered practitioner’ means a physician, podiatric physician and surgeon, physician**

1 assistant, nurse practitioner, optometrist, dentist, dental hygienist or naturopath.

2 “(c) ‘Disposition of a claim’ means:

3 “(A) A judgment or award against the covered practitioner by a court, a jury or an  
4 arbitrator;

5 “(B) A withdrawal or dismissal of the claim; or

6 “(C) A settlement of the claim.

7 “(d) ‘Reporter’ means:

8 “(A) A primary insurer;

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

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

13 “(D) A health maintenance organization as defined in ORS 750.005.

14 “(2) Within 30 days after receiving notice of a claim, a reporter shall report the claim to  
15 the appropriate board, as follows:

16 “(a) The Board of Medical Examiners if the covered practitioner is a physician, podiatric  
17 physician and surgeon or physician assistant;

18 “(b) The Oregon State Board of Nursing if the covered practitioner is a nurse practi-  
19 tioner;

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

21 “(d) The Oregon Board of Dentistry if the covered practitioner is a dentist or dental  
22 hygienist; or

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

24 “(3) The report required under subsection (2) of this section shall include:

25 “(a) The name of the covered practitioner;

26 “(b) The name of the person that filed the claim;

27 “(c) The date on which the claim was filed; and

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

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

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

40 “(b) If a board discloses information about a claim that is the subject of a report received  
41 under this section, the board shall indicate in the disclosure whether the claim resulted in  
42 a judicial finding or an admission of liability. A board may not publicly disclose or publish  
43 any allegations or factual assertions included in the claim unless the complaint resulted in  
44 a judicial finding or an admission of liability. For purposes of this paragraph, ‘judicial  
45 finding’ means a finding of liability by a court, a jury or an arbitrator.

1       “(6) A board that receives a report under this section shall provide copies of the report  
2 to each health care facility licensed under ORS 441.015 to 441.087, 441.525 to 441.595, 441.815,  
3 441.820, 441.990, 442.342, 442.344 and 442.400 to 442.463 that employs or grants staff privileges  
4 to the covered practitioner.

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

7       “**SECTION 2.** ORS 677.415 is amended to read:

8       “677.415. (1) As used in this section:

9       “(a) ‘Health care facility’ means a facility licensed under ORS 441.015 to 441.087.

10       “(b) ‘Official action[, *incident or event*]’ means a restriction, limitation, loss or denial of privi-  
11 leges of a licensee to practice medicine, **or** any formal action taken against a licensee by a gov-  
12 ernment agency or a health care facility based on a finding of medical incompetence, unprofessional  
13 conduct or licensee impairment[, *or the withdrawal by a licensee from the practice of medicine or*  
14 *podiatry*].

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

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

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

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

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

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

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

42       “(B) Information that appears to show that a licensee is or may be medically incompe-  
43 tent, is or may be guilty of unprofessional or dishonorable conduct or is or may be an im-  
44 paired licensee unable safely to engage in the practice of medicine or podiatry.

45       “(b) The Board of Medical Examiners may not require in a report made in accordance

1 with subsection (5) or (6) of this section more than:

2 “(A) The name, title, address and telephone number of the licensee making the report  
3 or the name, address and telephone number of the health care facility making the report;

4 “(B) The date of an official action taken against the licensee or the licensee’s voluntary  
5 action under subsection (6) of this section; and

6 “(C) A description of the official action or the licensee’s voluntary action, as appropriate  
7 to the report, including:

8 “(i) The specific restriction, limitation, suspension, loss or denial of the licensee’s medical  
9 staff privileges and the effective date or term of the restriction, limitation, suspension, loss  
10 or denial; or

11 “(ii) The fact that the licensee has voluntarily withdrawn from the practice of medicine  
12 or podiatry, voluntarily resigned from the staff of a health care facility or voluntarily limited  
13 the licensee’s privileges at a health care facility and the effective date of the withdrawal,  
14 resignation or limitation.

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

17 “(A) The name, title, address and telephone number of the licensee making the report;  
18 and

19 “(B) The specific restriction, limitation, suspension, loss or denial of the licensee’s staff  
20 privileges and the effective date or term of the restriction, limitation, suspension, loss or  
21 denial.

22 “(8) A report made in accordance with this section may not include any data that is  
23 privileged under ORS 41.675.

24 “[7] (9) If, in the opinion of the Board of Medical Examiners, it appears that information  
25 provided to it under this section is or may be true, the board may order an informal interview with  
26 the licensee subject to the notice requirement of ORS 677.320.

27 “(10)(a) A health care facility’s failure to report an official action as required under  
28 subsection (5) of this section constitutes a violation of this section. The health care facility  
29 is subject to a penalty of not more than \$10,000 for each violation. The Board of Medical  
30 Examiners may impose the penalty in accordance with ORS 183.745 and, in addition to the  
31 penalty, may assess reasonable costs the board incurs in enforcing the requirements of this  
32 section against the health care facility if the enforcement results in the imposition of a civil  
33 penalty.

34 “(b) The Attorney General may bring an action in the name of the State of Oregon in a  
35 court of appropriate jurisdiction to recover a civil penalty and costs assessed under this  
36 subsection.

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

40 “[8] (11) A person who reports in good faith to the Board of Medical Examiners as required  
41 by this section is immune from civil liability by reason of making the report.

42 “**SECTION 3.** ORS 677.205 is amended to read:

43 “677.205. (1) The Board of Medical Examiners for the State of Oregon may discipline as provided  
44 in this section any person licensed, registered or certified under this chapter who has:

45 “(a) Admitted the facts of a complaint filed in accordance with ORS 677.200 (1) alleging facts

1 which establish that such person is in violation of one or more of the grounds for suspension or  
2 revocation of a license as set forth in ORS 677.190;

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

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

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

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

9 “(a) Suspend judgment.

10 “(b) Place the licensee on probation.

11 “(c) Suspend the license.

12 “(d) Revoke the license.

13 “(e) Place limitations on the license.

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

17 “(3) In addition to the action authorized by subsection (2) of this section, the board may tem-  
18 porarily suspend a license without a hearing, simultaneously with the commencement of proceedings  
19 under ORS 677.200 if the board finds that evidence in its possession indicates that a continuation  
20 in practice of the licensee constitutes an immediate danger to the public.

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

26 “(5) If a license issued under this chapter is suspended, the holder of the license may not prac-  
27 tice during the term of suspension. Upon the expiration of the term of suspension, the license shall  
28 be reinstated by the board if the conditions for which the license was suspended no longer exist.

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

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

31 On page 2, delete lines 1 through 35.

32 In line 36, delete “2” and insert “4”.

33 On page 3, delete lines 31 through 35 and insert:

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

36 **“(2) The amendments to ORS 677.205 and 677.415 by sections 2 and 3 of this 2007 Act apply**  
37 **to health care facilities licensed under ORS 441.015 to 441.087, to licensees licensed by the**  
38 **Board of Medical Examiners, the Oregon Medical Association, Inc. or any component society**  
39 **thereof, the Osteopathic Physicians and Surgeons of Oregon, Inc. or the Oregon Podiatric**  
40 **Medical Association on or after the effective date of this 2007 Act and to any person licensed,**  
41 **registered or certified under ORS chapter 677 on or after the effective date of this 2007 Act.**

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

44 In line 36, delete “4” and insert “6”.