

Senate Bill 654

Sponsored by Senators BATES, MORSE

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 **as introduced**.

Authorizes Board of Medical Examiners for State of Oregon to establish professional liability fund for certain medical professionals licensed under ORS chapter 677. Authorizes assessments for fund. Excludes fund from Insurance Code. Exempts certain records from disclosure.

Requires board to establish state physician assistance committee. Allows board to create local physician assistance committees and personal and practice management assistance committees.

A BILL FOR AN ACT

1 Relating to health care; creating new provisions; and amending ORS 192.690 and 677.015.

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

3 **SECTION 1. (1) The Board of Medical Examiners for the State of Oregon may require all**
4 **persons licensed under this chapter who are engaged in the practice of medicine or podiatry**
5 **in Oregon to carry professional liability insurance and may, either by itself or in conjunction**
6 **with other medical organizations, do whatever is necessary to implement this section, in-**
7 **cluding owning, organizing and sponsoring any insurance organization authorized under the**
8 **laws of the State of Oregon.**

9 (2) The board may also establish a physician's professional liability fund. This fund shall
10 pay, on behalf of persons licensed under this chapter and engaged in the practice of medicine
11 or podiatry in Oregon, any sums as may be provided under the plan that any person covered
12 by the fund becomes legally obligated to pay as money damages because of any claim made
13 against the person as a result of any act or omission:

14 (a) Of the person in rendering or failing to render professional services for others in the
15 person's capacity as a physician or podiatric physician and surgeon; or

16 (b) Caused by any other person for whose acts or omissions the person covered by the
17 fund is legally responsible.

18 (3) The board may:

19 (a) Assess all persons licensed under this chapter who are engaged in the practice of
20 medicine or podiatry in Oregon for contributions to the fund;

21 (b) Establish definitions of coverage to be provided by the fund; and

22 (c) Retain or employ legal counsel to represent the fund and defend and control the de-
23 fense against any covered claim made against a person covered by the fund.

24 (4) The board may also offer, through the fund, through a separate fund or through any
25 insurance organization authorized under the laws of the State of Oregon, optional profes-
26 sional liability coverage on an underwritten basis above the minimum required coverage
27 limits provided under the fund, and may do whatever is necessary to implement this pro-
28 vision. Any fund so established is not subject to the Insurance Code. Records of a claim
29 against the fund are exempt from disclosure under ORS 192.410 to 192.505.
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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 (5) For purposes of this section, a physician or podiatric physician and surgeon is con-
2 sidered to be engaged in the practice of medicine or podiatry in Oregon if the physician or
3 podiatric physician and surgeon practices medicine or podiatry in Oregon more than 50 per-
4 cent of the time that the physician or podiatric physician and surgeon engages in the prac-
5 tice of medicine or podiatry.

6 (6) The board may appoint committees, officers and employees as it deems necessary or
7 proper to carry out the provisions of this section and may fix and pay their compensation
8 and necessary expenses from the fund.

9 (7) In establishing the fund described in subsection (2) of this section and offering op-
10 tional coverage under subsection (4) of this section, the board shall give preference to con-
11 tracting with an insurance provider established pursuant to the laws of the State of Oregon.

12 (8) The minimum mandatory professional liability coverage established by the board un-
13 der this section shall be offered to every person licensed under this chapter who is engaged
14 in the practice of medicine or podiatry in Oregon, and the cost of the coverage shall be the
15 same for each person offered coverage under this section.

16 **SECTION 2.** (1)(a) The Board of Medical Examiners for the State of Oregon shall create
17 a state physician assistance committee for the purpose of implementing a physician and
18 podiatric physician and surgeon assistance program to provide supervision and assistance to
19 those physicians and podiatric physicians and surgeons whose performance or conduct may
20 impair their professional competence or their ability to practice medicine or podiatry. The
21 state physician assistance committee may investigate referrals and complaints about the
22 performance or conduct of physicians or podiatric physicians and surgeons that may impair
23 their professional competency or ability to practice medicine or podiatry. The board may also
24 create local physician assistance committees to investigate referrals and complaints received
25 by the state physician assistance committee.

26 (b) The board shall adopt rules for the investigation and procedures for resolution of re-
27 ferrals and complaints by the state and local physician assistance committees.

28 (2)(a) In addition to state and local physician assistance committees created under sub-
29 section (1) of this section, the board may create personal and practice management assist-
30 ance committees to provide assistance to physicians and podiatric physicians and surgeons
31 who are suffering from impairment or other circumstances that may adversely affect their
32 professional competence or conduct. Personal and practice management assistance commit-
33 tees may also provide advice and training to physicians and podiatric physicians and surgeons
34 in practice management.

35 (b) The board may adopt rules governing the provision of assistance to physicians and
36 podiatric physicians and surgeons by personal and practice management assistance commit-
37 tees.

38 (c) The purpose of a personal and practice management assistance committee is the
39 provision of completely confidential assistance, advice and training to physicians and
40 podiatric physicians and surgeons in a manner that fosters maximum openness in commu-
41 nications between a physician or podiatric physician and surgeon and the committee and that
42 encourages a physician or podiatric physician and surgeon to seek assistance from the com-
43 mittee.

44 (3) Any information provided to or obtained by the state physician assistance committee,
45 any local physician assistance committee or any personal and practice management assist-

1 **ance committee, or provided to or obtained by any agent of those committees, is:**

2 **(a) Confidential;**

3 **(b) Exempt from the provisions of ORS 192.410 to 192.505;**

4 **(c) Not discoverable or admissible in any civil proceeding without the written consent of**
5 **the physician or podiatric physician and surgeon to whom the information pertains; and**

6 **(d) Not discoverable or admissible in any disciplinary proceeding except to the extent**
7 **provided by procedural rules of the board relating to the investigation of and disciplinary**
8 **proceedings concerning the conduct of licensees and applicants for admission or rein-**
9 **statement to the practice of medicine or podiatry.**

10 **(4) The limitations placed on the disclosure and admissibility of information in this sec-**
11 **tion shall not apply to information relating to a physician's or podiatric physician and sur-**
12 **geon's noncooperation with the state physician assistance committee, any local physician**
13 **assistance committee or any agent of those committees, or to information otherwise ob-**
14 **tained by the board from any other source.**

15 **(5) All meetings of the state physician assistance committee, local physician assistance**
16 **committees and personal and practice management assistance committees are exempt from**
17 **the provisions of ORS 192.610 to 192.690.**

18 **(6) Any person who makes a complaint or referral to the board relating to the compe-**
19 **tence of a physician or podiatric physician and surgeon or provides information or testimony**
20 **in connection with the state physician assistance committee, any local physician assistance**
21 **committee or any personal and practice management assistance committee is not subject to**
22 **an action for civil damages as a result thereof.**

23 **(7) With respect to their acts in connection with the state physician assistance commit-**
24 **tee, any local physician assistance committee or any personal and practice management as-**
25 **sistance committee, the same privileges and immunities from civil and criminal proceedings**
26 **that apply to prosecuting and judicial officers of the state apply to the board, all officers and**
27 **employees of the board, the members of the committees and their agents.**

28 **(8) For the purposes of this section, agents of the state physician assistance committee,**
29 **local physician assistance committees or personal and practice management assistance**
30 **committees include investigators, attorneys, counselors, staff personnel and any other indi-**
31 **vidual or entity acting on behalf of or at the request of the committees.**

32 **SECTION 3. Sections 1 and 2 of this 2007 Act are added to and made a part of ORS**
33 **chapter 677.**

34 **SECTION 4. ORS 192.690 is amended to read:**

35 192.690. (1) ORS 192.610 to 192.690 do not apply to the deliberations of the State Board of Parole
36 and Post-Prison Supervision, the Psychiatric Security Review Board, state agencies conducting
37 hearings on contested cases in accordance with the provisions of ORS chapter 183, the review by
38 the Workers' Compensation Board or the Employment Appeals Board of similar hearings on con-
39 tested cases, meetings of the state lawyers assistance committee operating under the provisions of
40 ORS 9.568, **meetings of state or local physician assistance committees operating under the**
41 **provisions of section 2 of this 2007 Act**, meetings of the personal and practice management as-
42 sistance committees operating under the provisions of ORS 9.568 **or section 2 of this 2007 Act**, the
43 county multidisciplinary child abuse teams required to review child abuse cases in accordance with
44 the provisions of ORS 418.747, the child fatality review teams required to review child fatalities in
45 accordance with the provisions of ORS 418.785, the peer review committees in accordance with the

1 provisions of ORS 441.055, mediation conducted under ORS 36.250 to 36.270, any judicial proceeding,
2 meetings of the Oregon Health and Science University Board of Directors or its designated com-
3 mittee regarding candidates for the position of president of the university or regarding sensitive
4 business, financial or commercial matters of the university not customarily provided to competitors
5 related to financings, mergers, acquisitions or joint ventures or related to the sale or other dispo-
6 sition of, or substantial change in use of, significant real or personal property, or related to health
7 system strategies, or to Oregon Health and Science University faculty or staff committee meetings.

8 (2) Because of the grave risk to public health and safety that would be posed by misappropri-
9 ation or misapplication of information considered during such review and approval, ORS 192.610 to
10 192.690 shall not apply to review and approval of security programs by the Energy Facility Siting
11 Council pursuant to ORS 469.530.

12 **SECTION 5.** ORS 677.015 is amended to read:

13 677.015. Recognizing that to practice medicine is not a natural right of any person but is a
14 privilege granted by legislative authority, it is necessary in the interests of the health, safety and
15 welfare of the people of this state to provide for the granting of that privilege and the regulation
16 of its use, to the end that the public is protected from the practice of medicine by unauthorized,
17 **uninsured** or unqualified persons and from unprofessional conduct by persons licensed to practice
18 under this chapter.

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