

# Senate Bill 786

Sponsored by COMMITTEE ON JUDICIARY (at the request of Oregon Medical Association)

## 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**.

Modifies procedure for investigation of complaints by Board of Medical Examiners. Specifies rules for disclosure of information obtained in course of investigation. Limits admissibility of information obtained in course of investigation in proceedings that are not part of investigation by board.

## A BILL FOR AN ACT

1  
2 Relating to investigation of complaints by Board of Medical Examiners; amending ORS 192.450,  
3 676.160, 676.400, 677.320 and 690.025.

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

5 **SECTION 1.** ORS 677.320 is amended to read:

6 677.320. (1) Upon the complaint of any citizen of this state, or upon its own initiative, the Board  
7 of Medical Examiners for the State of Oregon may investigate any alleged violation of this chapter.  
8 If, after the investigation, the board has reason to believe that any person is subject to prosecution  
9 criminally for the violation of this chapter, it shall lay the facts before the proper district attorney.

10 (2) In the conduct of investigations, the board or its designated representative may:

11 (a) Take evidence;

12 (b) Take the depositions of witnesses, including the person charged;

13 (c) Compel the appearance of witnesses, including the person charged;

14 (d) Require answers to interrogatories; and

15 (e) Compel the production of books, papers, accounts, documents and testimony pertaining to the  
16 matter under investigation.

17 (3) In exercising its authority under subsection (2) of this section, the board may issue subpoenas  
18 over the signature of the executive director and the seal of the board in the name of the State of  
19 Oregon.

20 (4) In any proceeding under this section where the subpoena is addressed to a licensee of this  
21 board, it shall not be a defense that the material that is subject to the subpoena is protected under  
22 a patient and physician privilege.

23 (5)(a) If a licensee **or applicant for licensure** who is the subject of an investigation or com-  
24 plaint is to appear before members of the board investigating the complaint, the board shall provide  
25 the licensee **or applicant** with a current summary of the complaint or the matter being investigated  
26 not less than [*five*] **30** days prior to the date that the licensee **or applicant** is to appear. At the time  
27 the summary of the complaint or the matter being investigated is provided, the board shall provide  
28 to the licensee [*a current summary of*] **or applicant all** documents, **including but not limited to**  
29 **investigatory reports, reports of expert witnesses, written statements and a summary of the**  
30 [*or*] alleged facts that the board has acquired as a result of the investigation. **Any documents that**  
31 **are obtained by the board less than 30 days prior to the date the licensee or applicant is to**

**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 **appear before the board shall be provided to the licensee or applicant not less than five days**  
 2 **prior to the date the licensee or applicant is to appear. Documents that are not provided to**  
 3 **the licensee or applicant as required under this paragraph may not be relied upon by the**  
 4 **board.** The name of the complainant or other information that reasonably may be used to identify  
 5 the complainant may be withheld from the licensee or applicant.

6 **(b) Information obtained or disclosed by the board as part of an investigation or pro-**  
 7 **ceeding involving a licensee or applicant is confidential and not subject to discovery and is**  
 8 **not admissible in any judicial, administrative, arbitration or mediation proceeding and is ex-**  
 9 **empt from disclosure pursuant to ORS 192.502 (9). However, the board may use information**  
 10 **obtained or disclosed by the board for purposes related to an investigation by or in a pro-**  
 11 **ceeding before the board.**

12 **(c) Information obtained or disclosed by a licensee or applicant that is related to an in-**  
 13 **vestigation by or a proceeding before the board is confidential and not subject to discovery**  
 14 **and is not admissible in any judicial, administrative, arbitration or mediation proceeding and**  
 15 **is exempt from disclosure pursuant to ORS 192.502 (9). However, the licensee or applicant**  
 16 **may use information obtained or disclosed by the board for purposes related to an investi-**  
 17 **gation by or in a proceeding before the board.**

18 **(d) Obtaining, disclosing or using information for any purpose related to an investigation**  
 19 **by or a proceeding before the board does not waive any privilege or restriction as to disclo-**  
 20 **sure established under this subsection.**

21 **(e)(A) Notwithstanding paragraphs (b) and (c) of this subsection, it is not disclosure to**  
 22 **the public for the board to permit other public officials and members of the press to attend**  
 23 **executive sessions where information obtained as part of an investigation is discussed. Public**  
 24 **officials and members of the press attending such executive sessions may not disclose in-**  
 25 **formation obtained as part of an investigation to any other member of the public.**

26 **(B) A public official or member of the press who discloses information in violation of this**  
 27 **paragraph is liable to the subject of the investigation for the greater of \$500 or the amount**  
 28 **of actual damages resulting from the disclosure.**

29 **(C) For purposes of this subsection, “public official” means a member or member-elect,**  
 30 **or any member of the staff or an employee, of a public entity.**

31 **(6) A licensee or applicant who is the subject of an investigation and any person authorized to**  
 32 **act on behalf of the licensee [shall] or applicant may not knowingly contact the complainant until**  
 33 **the licensee or applicant has requested a contested case hearing and the board has authorized the**  
 34 **taking of the complainant’s deposition pursuant to ORS 183.425.**

35 **(7) Except in an investigation or proceeding conducted by the board or another public entity,**  
 36 **or in an action, suit or proceeding where a public entity is a party, a licensee [shall] or applicant**  
 37 **may not be questioned or examined regarding any communication with the board made in an ap-**  
 38 **pearance before the board as part of an investigation. This section shall not prohibit examination**  
 39 **or questioning of a licensee regarding records dealing with a patient’s care and treatment or affect**  
 40 **the admissibility of those records. As used in this section, “public entity” has the meaning given that**  
 41 **term in ORS 676.177.**

42 **(8) Notwithstanding ORS 677.010, as used in this section, “board” means the Board of**  
 43 **Medical Examiners for the State of Oregon and its employees, staff, agents, affiliates, in-**  
 44 **vestigators and consultants.**

45 **SECTION 2.** ORS 676.160 is amended to read:

1 676.160. As used in ORS 676.165 to 676.180, “health professional regulatory board” means the:  
 2 (1) State Board of Examiners for Speech-Language Pathology and Audiology;  
 3 (2) State Board of Chiropractic Examiners;  
 4 (3) State Board of Clinical Social Workers;  
 5 (4) Oregon Board of Licensed Professional Counselors and Therapists;  
 6 (5) Oregon Board of Dentistry;  
 7 (6) Board of Examiners of Licensed Dietitians;  
 8 (7) State Board of Massage Therapists;  
 9 (8) State Mortuary and Cemetery Board;  
 10 (9) Board of Naturopathic Examiners;  
 11 (10) Oregon State Board of Nursing;  
 12 (11) Board of Examiners of Nursing Home Administrators;  
 13 (12) Oregon Board of Optometry;  
 14 (13) State Board of Pharmacy;  
 15 [(14) Board of Medical Examiners;]  
 16 [(15)] (14) Occupational Therapy Licensing Board;  
 17 [(16)] (15) Physical Therapist Licensing Board;  
 18 [(17)] (16) State Board of Psychologist Examiners;  
 19 [(18)] (17) Board of Radiologic Technology;  
 20 [(19)] (18) Oregon State Veterinary Medical Examining Board; and  
 21 [(20)] (19) Department of Human Services to the extent that the department certifies emergency  
 22 medical technicians.

23 **SECTION 3.** ORS 192.450 is amended to read:

24 192.450. (1) Subject to ORS 192.480 and subsection (4) of this section, any person denied the right  
 25 to inspect or to receive a copy of any public record of a state agency may petition the Attorney  
 26 General to review the public record to determine if it may be withheld from public inspection. Ex-  
 27 cept as provided in subsection (5) of this section, the burden is on the agency to sustain its action.  
 28 Except as provided in subsection (5) of this section, the Attorney General shall issue an order de-  
 29 nying or granting the petition, or denying it in part and granting it in part, within seven days from  
 30 the day the Attorney General receives the petition.

31 (2) If the Attorney General grants the petition and orders the state agency to disclose the re-  
 32 cord, or if the Attorney General grants the petition in part and orders the state agency to disclose  
 33 a portion of the record, the state agency shall comply with the order in full within seven days after  
 34 issuance of the order, unless within the seven-day period it issues a notice of its intention to insti-  
 35 tute proceedings for injunctive or declaratory relief in the Circuit Court for Marion County or, as  
 36 provided in subsection (6) of this section, in the circuit court of the county where the record is held.  
 37 Copies of the notice shall be sent to the Attorney General and by certified mail to the petitioner  
 38 at the address shown on the petition. The state agency shall institute the proceedings within seven  
 39 days after it issues its notice of intention to do so. If the Attorney General denies the petition in  
 40 whole or in part, or if the state agency continues to withhold the record or a part of it  
 41 notwithstanding an order to disclose by the Attorney General, the person seeking disclosure may  
 42 institute such proceedings.

43 (3) The Attorney General shall serve as counsel for the state agency in a suit filed under sub-  
 44 section (2) of this section if the suit arises out of a determination by the Attorney General that the  
 45 public record should not be disclosed, or that a part of the public record should not be disclosed if

1 the state agency has fully complied with the order of the Attorney General requiring disclosure of  
 2 another part or parts of the public record, and in no other case. In any case in which the Attorney  
 3 General is prohibited from serving as counsel for the state agency, the agency may retain special  
 4 counsel.

5 (4) A person denied the right to inspect or to receive a copy of any public record of a health  
 6 professional regulatory board, as defined in ORS 676.160, **or of the Board of Medical Examiners**  
 7 **for the State of Oregon** that contains information concerning a licensee or applicant, and peti-  
 8 tioning the Attorney General to review the public record shall, on or before the date of filing the  
 9 petition with the Attorney General, send a copy of the petition by first class mail to the [*health*  
 10 *professional regulatory*] board **that denied the request**. Not more than 48 hours after the board  
 11 receives a copy of the petition, the board shall send a copy of the petition by first class mail to the  
 12 licensee or applicant who is the subject of any record for which disclosure is sought. When sending  
 13 a copy of the petition to the licensee or applicant, the board shall include a notice informing the  
 14 licensee or applicant that a written response by the licensee or applicant may be filed with the At-  
 15 torney General not later than seven days after the date that the notice was sent by the board. Im-  
 16 mediately upon receipt of any written response from the licensee or applicant, the Attorney General  
 17 shall send a copy of the response to the petitioner by first class mail.

18 (5) The person seeking disclosure of a public record of a health professional regulatory board,  
 19 as defined in ORS 676.160, that is confidential or exempt from disclosure under ORS 676.165 or  
 20 676.175, **or of a public record of the Board of Medical Examiners for the State of Oregon that**  
 21 **is exempt from disclosure under ORS 677.320**, shall have the burden of demonstrating to the  
 22 Attorney General by clear and convincing evidence that the public interest in disclosure outweighs  
 23 other interests in nondisclosure, including but not limited to the public interest in nondisclosure.  
 24 The Attorney General shall issue an order denying or granting the petition, or denying or granting  
 25 it in part, not later than the 15th day following the day that the Attorney General receives the pe-  
 26 tition. A copy of the Attorney General's order granting a petition or part of a petition shall be  
 27 served by first class mail on the [*health professional regulatory*] board **that must disclose the re-**  
 28 **cord**, the petitioner and the licensee or applicant who is the subject of any record ordered to be  
 29 disclosed. The [*health professional regulatory*] board shall not disclose any record prior to the sev-  
 30 enth day following the service of the Attorney General's order on a licensee or applicant entitled  
 31 to receive notice under this subsection.

32 (6) If the Attorney General grants or denies the petition for a record of a health professional  
 33 regulatory board, as defined in ORS 676.160, **or of the Board of Medical Examiners for the State**  
 34 **of Oregon** that contains information concerning a licensee or applicant, the board **that denied the**  
 35 **request**, a person denied the right to inspect or receive a copy of the record or the licensee or  
 36 applicant who is the subject of the record may institute proceedings for injunctive or declaratory  
 37 relief in the circuit court for the county where the public record is held. The party seeking disclo-  
 38 sure of the record shall have the burden of demonstrating by clear and convincing evidence that the  
 39 public interest in disclosure outweighs other interests in nondisclosure, including but not limited to  
 40 the public interest in nondisclosure.

41 (7) The Attorney General may comply with a request of a health professional regulatory board  
 42 **or of the Board of Medical Examiners for the State of Oregon** to be represented by independent  
 43 counsel in any proceeding under subsection (6) of this section.

44 **SECTION 4.** ORS 676.400 is amended to read:

45 676.400. (1) It is the intention of the Legislative Assembly to achieve the goal of universal access

1 to adequate levels of high quality health care at an affordable cost for all Oregonians, regardless  
2 of ethnic or cultural background.

3 (2) The Legislative Assembly finds that:

4 (a) Access to health care is of value when it leads to treatment that substantially improves  
5 health outcomes;

6 (b) Health care is most effective when it accounts for the contribution of culture to health status  
7 and health outcomes;

8 (c) Ethnic and racial minorities experience more than their statistically fair share of undesirable  
9 health outcomes;

10 (d) The lack of licensed health care professionals from ethnic and racial minorities or who are  
11 bilingual contributes to the inadequacy of health outcomes in communities of color in this state; and

12 (e) The development of a partnership between health professional regulatory boards and com-  
13 munities of color to increase the representation of people of color and bilingual people in health  
14 care professions has significant potential to improve the health outcomes of people of color and bi-  
15 lingual citizens of this state.

16 (3) Health professional regulatory boards shall establish programs to increase the representation  
17 of people of color and bilingual people on the boards and in the professions that they regulate. Such  
18 programs must include activities to promote the education, recruitment and professional practice  
19 of members of these targeted populations in Oregon.

20 (4) Each health professional regulatory board shall maintain records of the racial and ethnic  
21 makeup of applicants and professionals regulated by the board. Such information shall be requested  
22 from applicants and the professionals regulated who shall be informed in writing that the provision  
23 of such information is voluntary and not required.

24 (5) Each health professional regulatory board shall report biennially to the Legislative Assembly  
25 in the manner required by ORS 192.245. The report shall contain:

26 (a) Data detailing the efforts of the board to comply with the requirements of subsection (3) of  
27 this section; and

28 (b) Data collected under subsection (4) of this section documenting the ethnic and racial makeup  
29 of the applicants and of the professionals regulated by the board.

30 (6) For purposes of this section, "health professional regulatory board" has the meaning given  
31 that term in ORS 676.160 **and also includes the Board of Medical Examiners for the State of**  
32 **Oregon.**

33 **SECTION 5.** ORS 690.025 is amended to read:

34 690.025. ORS 690.005 to 690.235 do not apply to:

35 (1) Persons who perform service without compensation in case of emergency or in domestic ad-  
36 ministration.

37 (2) Persons licensed by a health professional regulatory board listed in ORS 676.160 **or by the**  
38 **Board of Medical Examiners for the State of Oregon under ORS chapter 677** who are acting  
39 within the scope of their professional license.

40 (3) Persons identified by the agency or Board of Cosmetology by rule who are acting under the  
41 authority of a hospital or long term care facility licensed under ORS 441.025 or a residential facility  
42 licensed under ORS 443.415.

43 (4) Persons engaged in rendering emergency medical assistance as defined in ORS 30.800.

44 (5) Persons licensed by the State Board of Pharmacy, merchants or other individuals when  
45 demonstrating apparatus or supplies for purposes of sale.

1           (6) Commissioned medical and surgical officers and personnel of the United States Armed Ser-  
2 vices while operating on a military base and personnel of correctional institutions while operating  
3 on the premises of a correctional facility.

4           (7) Persons applying temporary makeup, combing hair or applying hair spray, without compen-  
5 sation specifically for the application or combing, for the sole purpose of preparing any individual  
6 for a professional photograph or theatrical performance.

7           (8) A student while engaged in training at the direction of and under the direct supervision of  
8 the faculty of a school licensed under ORS 345.010 to 345.450 to teach a field of practice.

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