

Enrolled Senate Bill 880

Sponsored by COMMITTEE ON HEALTH POLICY AND PUBLIC AFFAIRS (at the request of Oregon Pain Commission)

CHAPTER

AN ACT

Relating to treatment of pain; amending ORS 677.190, 677.470, 677.474 and 677.480; and repealing ORS 677.485.

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

SECTION 1. ORS 677.470 is amended to read:

677.470. As used in ORS 677.470 to 677.485:

(1) "Controlled substance" has the meaning given that term under ORS 475.005.

(2) "*Intractable pain*" means a pain state in which the cause of the pain cannot be removed or otherwise treated and for which, in the generally accepted course of medical practice, no relief or cure of the cause of the pain has been found after reasonable efforts, including, but not limited to, evaluation by the attending physician.]

(2) "**Health care professional**" means a person licensed by a health professional regulatory board who is practicing within the scope of practice of that licensure and who is authorized to prescribe or administer controlled substances.

(3) "**Health professional regulatory board**" has the meaning given that term in ORS 676.440.

SECTION 2. ORS 677.474 is amended to read:

677.474. (1) Notwithstanding any other provision of this chapter **and notwithstanding ORS 678.010 to 678.410 and ORS chapters 679 and 689**, a [*physician licensed under this chapter*] **health care professional** may prescribe or administer controlled substances to a person in the course of [*the physician's treatment of*] **treating** that person for a diagnosed condition causing [*intractable*] pain.

(2) A [*physician*] **health care professional** shall not be subject to disciplinary action by [*the Board of Medical Examiners*] **a health professional regulatory board** for prescribing or administering controlled substances in the course of treatment of a person for [*intractable*] pain with the goal of controlling the patient's pain for the duration of the pain.

(3) Subsections (1) and (2) of this section do not apply to:

(a) A [*physician's*] **health care professional's** treatment of a person for chemical dependency resulting from the use of controlled substances;

(b) The prescription or administration of controlled substances to a person the [*physician*] **health care professional** knows to be using the controlled substances for nontherapeutic purposes;

(c) The prescription or administration of controlled substances for the purpose of terminating the life of a person having [*intractable*] pain, except as allowed under ORS 127.800 to 127.897; or

(d) The prescription or administration of a substance that is not a controlled substance approved by the United States Food and Drug Administration for pain relief.

(4) Subsection (2) of this section does not exempt the governing body of any hospital or other medical facility from the requirements of ORS 441.055.

SECTION 3. ORS 677.480 is amended to read:

677.480. ORS 677.474 does not prohibit [*the Board of Medical Examiners*] **a health professional regulatory board** from placing on probation or denying, revoking, limiting or suspending the license of any [*physician*] **health care professional** who does any of the following:

(1) Prescribes or administers a controlled substance or treatment that is nontherapeutic in nature or nontherapeutic as administered or prescribed or that is administered or prescribed for a nontherapeutic purpose.

(2) Fails to keep a complete and accurate record of controlled substance purchases, dispensing and disposal as required by the Comprehensive Drug Abuse Prevention and Control Act of 1970 (P.L. 91-513), other federal law or ORS 475.005 to 475.285 and 475.840 to 475.980.

(3) Prescribes controlled substances without a legitimate medical purpose.

(4) Prescribes, administers or dispenses controlled substances in a manner detrimental to the best interest of the public.

(5) Prescribes, administers or dispenses a controlled substance in a manner prohibited under ORS 475.005 to 475.285 or 475.840 to 475.980.

(6) Falsifies prescription information, including, but not limited to, the identity of the recipient.

SECTION 4. ORS 677.190 is amended to read:

677.190. The Board of Medical Examiners for the State of Oregon may refuse to grant, or may suspend or revoke a license to practice for any of the following reasons:

(1)(a) Unprofessional or dishonorable conduct.

(b) For purposes of this subsection, the use of an alternative medical treatment shall not by itself constitute unprofessional conduct. For purposes of this paragraph:

(A) "Alternative medical treatment" means:

(i) A treatment that the treating physician, based on the physician's professional experience, has an objective basis to believe has a reasonable probability for effectiveness in its intended use even if the treatment is outside recognized scientific guidelines, is unproven, is no longer used as a generally recognized or standard treatment or lacks the approval of the United States Food and Drug Administration;

(ii) A treatment that is supported for specific usages or outcomes by at least one other physician licensed by the Board of Medical Examiners; and

(iii) A treatment that poses no greater risk to a patient than the generally recognized or standard treatment.

(B) "Alternative medical treatment" does not include use by a physician of controlled substances in the treatment of a person for chemical dependency resulting from the use of controlled substances.

(2) Employing any person to solicit patients for the licensee. However, a managed care organization, independent practice association, preferred provider organization or other medical service provider organization may contract for patients on behalf of physicians.

(3) Representing to a patient that a manifestly incurable condition of sickness, disease or injury can be cured.

(4) Obtaining any fee by fraud or misrepresentation.

(5) Willfully or negligently divulging a professional secret without the written consent of the patient.

(6) Conviction of any offense punishable by incarceration in a Department of Corrections institution or in a federal prison, subject to ORS 670.280. A copy of the record of conviction, certified to by the clerk of the court entering the conviction, shall be conclusive evidence of the conviction.

(7) Habitual or excessive use of intoxicants, drugs or controlled substances.

(8) Fraud or misrepresentation in applying for or procuring a license to practice in this state, or in connection with applying for or procuring registration.

(9) Making statements that the licensee knows, or with the exercise of reasonable care should know, are false or misleading, regarding skill or the efficacy or value of the medicine, treatment or remedy prescribed or administered by the licensee or at the direction of the licensee in the treatment of any disease or other condition of the human body or mind.

(10) Impersonating another licensee licensed under this chapter or permitting or allowing any person to use the license.

(11) Aiding or abetting the practice of medicine or podiatry by a person not licensed by the board, when the licensee knows, or with the exercise of reasonable care should know, that the person is not licensed.

(12) Using the name of the licensee under the designation "doctor," "Dr.," "D.O." or "M.D.," "D.P.M.," "Acupuncturist," "P.A." or any similar designation in any form of advertising that is untruthful or is intended to deceive or mislead the public.

(13) Insanity or mental disease as evidenced by an adjudication or voluntary commitment to an institution for the treatment of a mental disease that affects the ability of the licensee to safely practice medicine, or as determined by an examination conducted by three impartial psychiatrists retained by the board.

(14) Gross negligence or repeated negligence in the practice of medicine or podiatry.

(15) Incapacity to practice medicine or podiatry. If the board has evidence indicating incapacity, the board may order a licensee to submit to a standardized competency examination. The licensee shall have access to the result of the examination and to the criteria used for grading and evaluating the examination. If the examination is given orally, the licensee shall have the right to have the examination recorded.

(16) Disciplinary action by another state of a license to practice, based upon acts by the licensee similar to acts described in this section. A certified copy of the record of the disciplinary action of the state is conclusive evidence thereof.

(17) Failing to designate the degree appearing on the license under circumstances described in ORS 677.184 (3).

(18) Willfully violating any provision of this chapter or any rule adopted by the board, board order, or failing to comply with a board request pursuant to ORS 677.320.

(19) Failing to report the change of the location of practice of the licensee as required by ORS 677.172.

(20) Adjudication of or admission to a hospital for mental illness or imprisonment as provided in ORS 677.225.

(21) Making a fraudulent claim.

(22)(a) Performing psychosurgery.

(b) For purposes of this subsection and ORS 426.385, "psychosurgery" means any operation designed to produce an irreversible lesion or destroy brain tissue for the primary purpose of altering the thoughts, emotions or behavior of a human being. "Psychosurgery" does not include procedures which may produce an irreversible lesion or destroy brain tissues when undertaken to cure well-defined disease states such as brain tumor, epileptic foci and certain chronic pain syndromes.

(23) Refusing an invitation for an informal interview with the board requested under ORS 677.415.

(24) Violation of the federal Controlled Substances Act.

(25) Prescribing controlled substances without a legitimate medical purpose, or prescribing controlled substances without following accepted procedures for examination of patients, or prescribing controlled substances without following accepted procedures for record keeping [*or without giving the notice required under ORS 677.485*].

(26) Failure by the licensee to report to the board any adverse action taken against the licensee by another licensing jurisdiction or any peer review body, health care institution, professional or medical society or association, governmental agency, law enforcement agency or court for acts or

conduct similar to acts or conduct that would constitute grounds for disciplinary action as described in this section.

(27) Failure by the licensee to notify the board of the licensee's voluntary resignation from the staff of a health care institution or voluntary limitation of a licensee's staff privileges at the institution if that action occurs while the licensee is under investigation by the institution or a committee thereof for any reason related to medical incompetence, unprofessional conduct or mental or physical impairment.

SECTION 5. ORS 677.485 is repealed.

Passed by Senate April 2, 2007

.....
Secretary of Senate

.....
President of Senate

Passed by House May 21, 2007

.....
Speaker of House

Received by Governor:

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

Approved:

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

.....
Governor

Filed in Office of Secretary of State:

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

.....
Secretary of State