

Senate Bill 898

Sponsored by Senator G GEORGE

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**.

Prohibits State Board of Chiropractic Examiners from expanding scope of investigation of complaint beyond scope of original complaint. Requires members of peer review to be unbiased and provides for resignation of biased members. Requires evaluation of complaint by peer review committee to be completed in 120 days.

A BILL FOR AN ACT

1
2 Relating to complaints made to State Board of Chiropractic Examiners; amending ORS 684.100,
3 684.150 and 684.185.

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

5 **SECTION 1.** ORS 684.100 is amended to read:

6 684.100. (1) The State Board of Chiropractic Examiners may refuse to grant a license to any
7 applicant or may discipline a person upon any of the following grounds:

8 (a) Fraud or misrepresentation.

9 (b) The practice of chiropractic under a false or assumed name.

10 (c) The impersonation of another practitioner of like or different name.

11 (d) A conviction of a felony or misdemeanor involving moral turpitude. A copy of the record of
12 conviction, certified to by the clerk of the court entering the conviction, is conclusive evidence of
13 the conviction.

14 (e) Commitment to a mental institution. A copy of the record of commitment, certified to by the
15 clerk of the court entering the commitment, is conclusive evidence of the commitment.

16 (f) Habitual intemperance in the use of intoxicants or controlled substances to such an extent
17 as to incapacitate the person from the performance of professional duties.

18 (g) Unprofessional or dishonorable conduct, including but not limited to:

19 (A) Any conduct or practice contrary to recognized standard of ethics of the chiropractic pro-
20 fession or any conduct or practice that does or might constitute a danger to the health or safety
21 of a patient or the public or any conduct, practice or condition that does or might impair a physi-
22 cian's ability safely and skillfully to practice chiropractic.

23 (B) Willful ordering or performance of unnecessary laboratory tests or studies; administration
24 of unnecessary treatment; failure to obtain consultations or perform referrals when failing to do so
25 is not consistent with the standard of care; or otherwise ordering or performing any chiropractic
26 service, X-ray or treatment that is contrary to recognized standards of practice of the chiropractic
27 profession.

28 (C) Gross malpractice or repeated malpractice.

29 (h) Failing to notify the board of a change in location of practice as provided in ORS 684.054.

30 (i) Representing to a patient that a manifestly incurable condition of sickness, disease or injury

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 can be permanently cured.

2 (j) The use of any advertising making untruthful, improper, misleading or deceptive statements.

3 (k) The advertising of techniques or modalities to infer or imply superiority of treatment or di-
4 agnosis by the use thereof that cannot be conclusively proven to the satisfaction of the board.

5 (L) Knowingly permitting or allowing any person to use the license of the person in the practice
6 of any system or mode of treating the sick.

7 (m) Advertising either in the name of the person or under the name of another person, clinic
8 or concern, actual or pretended, in any newspaper, pamphlet, circular or other written or printed
9 paper or document, professing superiority to or a greater skill than that possessed by other
10 chiropractic physicians that cannot be conclusively proven to the satisfaction of the board.

11 (n) Aiding or abetting the practice of any of the healing arts by an unlicensed person.

12 (o) The use of the name of the person under the designation, "Doctor," "Dr.," "D.C.,"
13 "Chiropractor," "Chiropractic D.C.," "Chiropractic Physician," or "Ph.C.," or any similar desig-
14 nation with reference to the commercial exploitation of any goods, wares or merchandise.

15 (p) The advertising or holding oneself out to treat diseases or other abnormal conditions of the
16 human body by any secret formula, method, treatment or procedure.

17 (q) Violation of any provision of this chapter or any rule adopted thereunder.

18 (r) Gross incompetency or gross negligence.

19 (s) The suspension or revocation by another state of a license to practice chiropractic, based
20 upon acts by the licensee similar to acts described in this section. A certified copy of the record
21 of suspension or revocation of the state making the suspension or revocation is conclusive evidence
22 thereof.

23 (t) Failing to give prior notice to patients of the permanent or temporary closure of the physi-
24 cian's practice or failing to give reasonable access to the records and files of the physician's pa-
25 tients at any time.

26 (u) The suspension or revocation by another licensing board in the state of a license to practice
27 as another type of health care provider.

28 (2) The board may, at any time two years or more after the refusal, revocation or cancellation
29 of registration under this section, by a majority vote, issue a license restoring to or conferring on
30 the person all the rights and privileges of the practice of chiropractic as defined and regulated by
31 this chapter. Any person to whom those rights have been restored shall pay to the board the annual
32 registration fee for the license category plus one-half thereof.

33 (3) If the board determines that a chiropractic physician's continuation in practice would con-
34 stitute a serious danger to the public, the board may suspend the license of the chiropractic physi-
35 cian without a hearing. Simultaneously with the order of suspension, the board must institute
36 proceedings for a hearing provided under this section and the suspension may continue unless
37 injunctive relief is obtained from a court of competent jurisdiction showing just cause or undue
38 burden under the circumstances existing.

39 (4) If a physician refuses a written request for an informal interview with the board, the board
40 shall have grounds to suspend or revoke the license of a physician pursuant to this section.

41 (5) Prior to or following an informal interview as described in this section, the board may re-
42 quest any Oregon licensed chiropractic physician in good standing to assist the board in preparing
43 for or conducting any professional competency examination as the board may deem appropriate.

44 (6) Notwithstanding any other provisions of ORS 684.010, 684.040, 684.050, 684.090, 684.100,
45 684.112, 684.130, 684.150 and 684.155, the board may at any time direct and order a professional

1 competency examination limited to the area of practice out of which a specific complaint has arisen
 2 and make an investigation, including the taking of depositions or otherwise in order to fully inform
 3 itself with respect to the performance or conduct of a physician licensed under ORS 684.010, 684.040,
 4 684.050, 684.090, 684.100, 684.112, 684.130, 684.150 and 684.155. **The board shall confine an inves-**
 5 **tigation made under this section to the specific complaint received and may not expand the**
 6 **investigation on its own motion.**

7 (7) If the board has reasonable cause to believe that any:

8 (a) Chiropractic physician is or may be unable to practice with reasonable skill and safety to
 9 patients, the board may:

10 (A) Cause a competency examination of the physician for purposes of determining the physi-
 11 cian’s fitness to practice chiropractic with reasonable skill and safety to patients; or

12 (B) Require the fingerprints and relevant personal history data of the physician for the purpose
 13 of requesting a state or nationwide criminal records check under ORS 181.534.

14 (b) Person certified to provide physiotherapy, electrotherapy or hydrotherapy pursuant to ORS
 15 684.155 (1)(c) is or may be unable to provide the therapies with reasonable skill and safety to pa-
 16 tients, the board may:

17 (A) Cause a competency examination of the person for purposes of determining the person’s fit-
 18 ness to provide the therapies with reasonable skill and safety to patients; or

19 (B) Require the fingerprints and relevant personal history data of the person for the purpose of
 20 requesting a state or nationwide criminal records check under ORS 181.534.

21 (8) Refusal by any person to take or appear for a competency examination scheduled by the
 22 board or to submit fingerprints and relevant personal history data as required by the board under
 23 subsection (7) of this section shall constitute grounds for disciplinary action.

24 (9) In disciplining a person as authorized by subsection (1) of this section, the board may use
 25 any or all of the following methods:

26 (a) Suspend judgment.

27 (b) Place the person on probation.

28 (c) Suspend the license of the person to practice chiropractic in this state.

29 (d) Revoke the license of the person to practice chiropractic in this state.

30 (e) Place limitations on the license of the person to practice chiropractic in this state.

31 (f) Impose a civil penalty not to exceed \$10,000.

32 (g) Take other disciplinary action as the board in its discretion finds proper, including assess-
 33 ment of the costs of the disciplinary proceedings.

34 (10)(a) Any information that the board obtains pursuant to ORS 684.100, 684.112 and 684.155 (9)
 35 is confidential as provided under ORS 676.175.

36 (b) Any person who reports or provides information to the board under ORS 684.090, 684.100,
 37 684.112, 684.150 and 684.155 and who provides information in good faith shall not be subject to an
 38 action for civil damages as a result thereof.

39 **SECTION 2.** ORS 684.150 is amended to read:

40 684.150. (1) The State Board of Chiropractic Examiners shall adopt a seal which shall be affixed
 41 to all licenses issued by it. The board shall from time to time adopt such rules as it deems proper
 42 and necessary for the administration of this chapter and the performance of its work. Upon receipt
 43 of a complaint, the board has authority to make investigations, administer oaths, take affidavits,
 44 summon witnesses, and require the production of evidence, documents and records pertaining to the
 45 complaint. **The board shall confine an investigation made under this section to the specific**

1 **complaint received and may not expand the investigation on its own motion.** The board may
 2 also take testimony as to matters pertaining to its duties and for the administration of this chapter.
 3 A majority of the board constitutes a quorum.

4 (2) The board shall meet as a board of examiners during the months of January and July each
 5 year on such days and at such times and places as may be found necessary for the performance of
 6 its duties.

7 (3) The board shall adopt a schedule of minimum educational requirements, which shall be
 8 without prejudice or discrimination as to the different colleges teaching chiropractic.

9 **SECTION 3.** ORS 684.185 is amended to read:

10 684.185. (1) The State Board of Chiropractic Examiners shall appoint and form peer review
 11 committees. The peer review committee shall evaluate complaints against chiropractic physicians
 12 that are referred to it by the board and report to the board regarding those complaints. **Any**
 13 **member of a peer review committee who is biased against the subject of the peer review**
 14 **process shall resign from the committee and shall be replaced by an unbiased person ap-**
 15 **pointed by the board. If the person who is the subject of the peer review process alleges that**
 16 **a member of the committee is biased and the member declines to resign from the committee,**
 17 **upon request of the subject of the peer review process, the peer review process shall be**
 18 **suspended and an expedited hearing shall be held in accordance with the provisions of ORS**
 19 **chapter 183 to resolve the matter of the resignation.**

20 (2) The members of a peer review committee shall be appointed from among those in the pro-
 21 fession who are in active practice with five or more years of practice representing various ge-
 22 ographic areas in this state. Members shall be representative of affiliated and nonaffiliated
 23 chiropractic physicians and representative of various aspects of the practice of chiropractic. To be
 24 appointed a member must receive at least four votes from members of the state board. Members
 25 shall serve three-year terms. No member may serve more than two consecutive terms.

26 (3) The peer review process shall be governed by rules of the state board adopted pursuant to
 27 ORS chapter 183. The state board shall provide appropriate training for members of peer review
 28 committees.

29 (4)(a) **A peer review evaluation conducted under this section must be completed and a**
 30 **report of the findings of the evaluation provided to the board no later than 120 days from the**
 31 **date the peer review committee was assigned to investigate the complaint.**

32 (b) **The board may grant a 30-day extension of the time allowed to complete the review**
 33 **and provide the report to the board if written notice of the extension is given to the person**
 34 **who is the subject of the review prior to the expiration of the 120-day period provided for in**
 35 **paragraph (a) of this subsection. No more than one extension may be granted.**

36 [(4)] (5) Members of a peer review committee acting pursuant to this section are agents of the
 37 state board and are subject to provisions of ORS 30.260 to 30.300.

38 [(5)] (6) Peer review shall not be used to replace independent medical examinations.

39 [(6)] (7) Upon receipt of a complaint under this chapter, the peer review committee shall conduct
 40 an investigation as described under ORS 676.165.

41 [(7)] (8) Any information provided to a peer review committee in the performance of its duties
 42 is confidential and shall not be subject to public disclosure or admissible as evidence in any judicial
 43 proceeding, except that as a part of a peer review report, this information may be disclosed to the
 44 state board and the person being reviewed who may then use the information in any disciplinary
 45 or court proceeding brought by the board. Peer review committee information that becomes part of

1 the record of a board investigation into licensee or applicant conduct or part of a contested case
2 proceeding, consent order or stipulated agreement involving licensee or applicant conduct is confi-
3 dential as provided under ORS 676.175.

4 ~~[(8)]~~ **(9)** Any person who reports or provides information to a peer review committee in the
5 performance of its duties and who provides information in good faith shall not be subject to an
6 action for civil damages as a result thereof.

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