

**Enrolled**  
**House Bill 2118**

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CHAPTER .....

AN ACT

Relating to licensing boards; creating new provisions; amending ORS 426.385, 675.070, 675.100, 675.130, 675.300, 675.310, 675.320, 675.510, 675.540, 675.583, 675.590, 675.600, 675.745, 675.775, 675.785, 676.165, 676.608, 677.010, 677.188, 677.190, 677.235, 677.250, 677.270, 677.275, 677.415, 677.417, 677.655, 678.111, 678.112, 678.140, 678.150, 678.442, 678.780, 678.800, 679.140, 679.230, 679.250, 679.290, 681.350, 681.400, 681.410, 681.450, 683.140, 683.250, 683.260, 684.010, 684.100, 684.103, 684.130, 684.140, 684.157, 685.110, 685.160, 685.170, 686.120, 686.130, 686.210, 687.051, 687.081, 687.115, 688.140, 688.160, 688.525, 688.545, 689.005, 689.115, 689.165, 689.195, 689.255, 689.265, 689.405, 689.508, 691.485, 691.505, 691.535, 692.180, 692.300 and 692.320 and section 38, chapter 43, Oregon Laws 2009 (Enrolled Senate Bill 131), and section 50, chapter \_\_\_, Oregon Laws 2009 (Enrolled Senate Bill 177); and repealing ORS 689.125 and section 1, chapter 43, Oregon Laws 2009 (Enrolled Senate Bill 131), and section 2, chapter \_\_\_, Oregon Laws 2009 (Enrolled Senate Bill 177).

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

**HEALTH PROFESSIONAL LICENSING BOARDS GENERALLY**

**SECTION 1. (1) As used in this section:**

(a) "Health professional regulatory board" means the agencies listed in ORS 676.160 and the Oregon Health Licensing Agency created in ORS 676.605.

(b) "Impairment" means an inability to practice with reasonable competence and safety due to the habitual or excessive use of drugs or alcohol, other chemical dependency or a mental health condition.

(c) "License" means a license, registration, certification or other authorization to engage in a profession.

(d) "Licensee" means a person licensed, registered, certified or otherwise authorized by a health professional regulatory board to engage in a profession.

(2) All health professional regulatory boards shall operate with the primary purposes of promoting the quality of health services provided, protecting the public health, safety and welfare by ensuring that licensees practice with professional skill and safety and addressing impairment among licensees.

(3) For the purpose of requesting a state or nationwide criminal records check under ORS 181.534, a health professional regulatory board may require the fingerprints of a licensee

seeking renewal of a license, an applicant for a license, a board employee or volunteer or an applicant for employment with the board.

**SECTION 2.** (1) As used in this section:

(a) "Health professional regulatory board" means the agencies listed in ORS 676.160 and the Oregon Health Licensing Agency created in ORS 676.605.

(b) "License" means a license, registration, certification or other authorization to engage in a profession.

(2) A health professional regulatory board continues to have jurisdiction for licensing, regulatory and disciplinary purposes related to acts and omissions that occur while a person is licensed or required to be licensed, regardless of any changes in the licensing status of the person.

(3) A person who obtains, but is not required to obtain, a license to engage in a profession regulated by a health professional regulatory board, and whose license expires, lapses or is voluntarily surrendered while the person is under investigation by the board, or whose license is suspended or revoked, may not engage in that profession unless the person again obtains a license from the relevant health professional regulatory board to engage in the profession.

(4) Nothing in this section limits the jurisdictional, investigatory or other authority otherwise provided by law to a health professional regulatory board.

**SECTION 3.** (1) As used in this section, "health professional regulatory board" means the agencies listed in ORS 676.160 and the Oregon Health Licensing Agency created in ORS 676.605.

(2) Notwithstanding ORS 192.410 to 192.505, a health professional regulatory board may, at its discretion, release or withhold the personal electronic mail address, home address and personal telephone number for a person licensed, registered or certified by the board. If the personal electronic mail address, home address or personal telephone number is requested for a public health or state health planning purpose, the board shall release the information.

**SECTION 4.** (1) As used in this section, "health professional regulatory board" means a health professional regulatory board described in ORS 676.160 other than the Department of Human Services with regard to the certification of emergency medical technicians.

(2) Subject to applicable provisions of the State Personnel Relations Law and the approval of the Governor, notwithstanding ORS 182.468, each health professional regulatory board shall appoint an executive director and prescribe the duties and fix the compensation of the executive director. The executive director shall serve at the pleasure of the Governor under the direct supervision of the appointing board. The board may request that the Governor remove the executive director.

(3) In addition to any other duties imposed by law or otherwise required of state agencies, the executive director shall keep all records of the board and discharge all duties prescribed by the board.

(4) The executive director shall prepare periodic reports regarding the licensing, monitoring and investigative activities of the board. The executive director shall submit the reports to the board and the Governor. The Oregon Department of Administrative Services, in consultation with the board, shall adopt rules specifying requirements for the report content and processes for preparing and submitting the reports. The rules may be consistent with performance management measures and processes initiated by the department. The rules shall require each board to undergo a peer review of board activities by a team of executive directors of other health professional regulatory boards and at least one public member. The department may assess the board for the cost of the peer review.

**SECTION 5.** ORS 676.165 is amended to read:

676.165. (1) *[Upon receipt of]* **When a health professional regulatory board or the Oregon Health Licensing Agency receives a complaint by any person against a licensee [or applicant, a health professional regulatory], applicant or other person alleged to be practicing in violation**

**of law, the board or agency** shall assign one or more persons to act as investigator of the complaint.

(2) The investigator shall collect evidence and interview witnesses and shall make a report to the board **or agency**. The investigator shall have all investigatory powers possessed by the board **or agency**.

(3) The report to the board **or agency** shall describe the evidence gathered, the results of witness interviews and any other information considered in preparing the report of the investigator. The investigator shall consider, and include in the report, any disciplinary history **with the board or agency** of the licensee, [or] applicant [*with the board*] **or other person alleged to be practicing in violation of law**.

(4) The investigator shall make the report to the board **or agency** not later than 120 days after the board **or agency** receives the complaint. However, the board **or agency** may extend the time for making the report by up to 30 days for just cause. The board **or agency** may grant more than one extension of time.

(5) Investigatory information obtained by an investigator and the report issued by the investigator shall be exempt from public disclosure.

**(6) When a health professional regulatory board reviews the investigatory information and report, the public members of the board must be actively involved.**

**SECTION 5a.** ORS 676.608 is amended to read:

676.608. (1)(a) Upon its own motion [*or upon any complaint*], the Oregon Health Licensing Agency may initiate and conduct investigations of matters relating to the practice of occupations or professions subject to the authority of the boards, councils and programs listed in ORS 676.606.

**(b) When the agency receives a complaint by any person against a holder of a certificate, permit, license or registration to practice issued by the agency, the agency shall investigate the complaint as provided in ORS 676.165.**

(2) While conducting an investigation authorized under subsection (1) of this section or a hearing related to an investigation, the agency may:

(a) Take evidence;

(b) Administer oaths;

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

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

(e) Require answers to interrogatories;

(f) Compel the production of books, papers, accounts, documents and testimony pertaining to the matter under investigation; and

(g) Conduct criminal and civil background checks to determine conviction of a crime that bears a demonstrable relationship to the field of practice.

(3) In exercising its authority under this section, the agency may issue subpoenas over the signature of the Director of the Oregon Health Licensing Agency or designated employee thereof and in the name of the State of Oregon.

(4) If a person fails to comply with a subpoena issued under this section, the judge of the Circuit Court for Marion County may compel obedience by initiating proceedings for contempt as in the case of disobedience of the requirements of a subpoena issued from the court.

(5) If necessary, the director, or an employee designated by the director, may appear before a magistrate empowered to issue warrants in criminal cases to request that the magistrate issue a warrant. The magistrate shall issue a warrant, directing it to any sheriff or deputy or police officer, to enter the described property, to remove any person or obstacle, to defend any threatened violence to the director or a designee of the director or an officer, upon entering private property, or to assist the director in enforcing the agency's authority in any way.

(6) In all investigations and hearings, the agency and any person affected thereby may have the benefit of counsel.

**SECTION 5b.** Section 5c of this 2009 Act is added to and made a part of ORS 676.605 to 676.625.

**SECTION 5c.** (1) In addition to any other duties imposed by law or otherwise required of state agencies, the Director of the Oregon Health Licensing Agency shall keep all records of the agency and discharge all duties prescribed by the agency.

(2) The director shall prepare periodic reports regarding the licensing, monitoring and investigative activities of the agency. The director shall submit the reports to the Governor. The Oregon Department of Administrative Services, in consultation with the agency, shall adopt rules specifying requirements for the report content and processes for preparing and submitting the reports. The rules may be consistent with performance management measures and processes initiated by the department. The rules shall require the agency to undergo a peer review of agency activities by a team of executive directors of health professional regulatory boards, as defined in ORS 676.160, and at least one public member of a health professional regulatory board. The department may assess the agency for the cost of the peer review.

#### STATE BOARD OF PSYCHOLOGIST EXAMINERS

**SECTION 6.** ORS 675.070 is amended to read:

675.070. (1) Where any of the grounds enumerated in subsection (2) of this section exist, the State Board of Psychologist Examiners may impose any of the following sanctions:

- (a) Deny a license to any applicant;
- (b) Refuse to renew the license of any psychologist or psychologist associate;
- (c) Suspend the license of any psychologist or psychologist associate for a period of not less than one year;
- (d) Issue a letter of reprimand;
- (e) Impose probation with authority to restrict the scope of practice of a psychologist or psychologist associate or require practice under supervision;
- (f) Revoke the license of any psychologist or psychologist associate; or
- (g) Impose a civil penalty not to exceed \$1,000.

(2) Grounds exist for imposition of any of the sanctions enumerated in subsection (1) of this section against any psychologist or psychologist associate or applicant, or, where applicable, any unlicensed person found in violation of ORS 675.010 to 675.150, when, in the judgment of the board, the person:

(a) [*Abuses intoxicants or controlled substances to such an extent as to incapacitate the person from the performance of professional duties*] **Has an impairment as defined in section 1 of this 2009 Act;**

- (b) Has been convicted of violation of any law relating to controlled substances;
- (c) Has been convicted of any felony or of any misdemeanor involving moral turpitude;
- (d) Is guilty of immoral or unprofessional conduct or of gross negligence in the practice of psychology which includes but is not limited to:

(A) Any conduct or practice contrary to recognized standard of ethics of the psychological profession or any conduct or practice [*which*] **that** constitutes a danger to the health or safety of a patient or the public, or any conduct, practice or condition [*which impairs*] **that adversely affects** a psychologist or psychologist associate's ability to practice psychology safely and skillfully.

(B) Willful ordering or performing of unnecessary tests or studies, administration of unnecessary treatment, failure to obtain consultations or perform referrals when failing to do so is not consistent with the standard of care, or otherwise ordering or performing any psychological service or treatment which is contrary to recognized standards of practice of the psychological profession;

[*e*] *Is mentally or emotionally unfit to practice psychology;*]

[*f*] (e) Has practiced or attempted to practice medicine without being licensed to do so;

[*g*] (f) Has obtained or attempted to obtain a license under ORS 675.010 to 675.150 by fraud or material misrepresentation;

[(h)] (g) Has impersonated a licensed psychologist or psychologist associate or has allowed another person to use the license of the psychologist;

[(i)] (h) Has violated any provision of ORS 675.010 to 675.150 or any provision of the code of professional conduct formulated under ORS 675.110 (12); or

[(j)] (i) Has obtained a fee or payment from a patient or third party payer through fraud or intentional misrepresentation.

(3) In case of any conviction required under subsection (2) of this section as grounds for denial, refusal, suspension, revocation, reprimand, probation or imposition of a civil penalty, a certified copy of the record of the conviction shall be conclusive evidence.

(4) The board may license an applicant or renew or restore any license suspended or revoked under subsection [(2)(e)] (2)(a) of this section [whenever] **due to a mental health condition** if the board determines that the applicant or former licensed psychologist or former psychologist associate [is no longer mentally or emotionally unfit to practice psychology] **no longer has an impairment due to a mental health condition.**

(5) License suspension or revocation in another state is grounds for license denial or disciplinary action by the board.

**SECTION 7.** ORS 675.100 is amended to read:

675.100. (1) There hereby is created a State Board of Psychologist Examiners consisting of seven members appointed by the Governor **and subject to confirmation by the Senate in the manner provided in ORS 171.562 and 171.565. All members of the board must be Oregon residents. Of the members of the board:**

(a) Five of the members [shall be residents of Oregon,] **must** have doctoral degrees with primary emphasis in psychology and [shall be licensed under ORS 675.010 to 675.150.] **must be licensed psychologists or former licensed psychologists who are retired from the practice of psychology; and**

(b) Two **of the** members [shall be residents of Oregon and shall serve as public members.] **must be members of the public and may not be:**

(A) **Otherwise eligible for appointment to the board; or**

(B) **A spouse, domestic partner, child, parent or sibling of a licensed psychologist.**

(2)(a) **Board members required to be licensed psychologists may be appointed from a list of three to five nominees for each vacancy, submitted by any professional organization that represents psychologists.**

(b) **In selecting the members of the board, the Governor shall strive to balance the representation on the board according to:**

(A) **Geographic areas of this state; and**

(B) **Ethnic group.**

[(2)] (3)(a) The term of office of a board member [shall be three] **is three** years, but [the members shall serve] **a member serves** at the pleasure of the Governor.

(b) Before the expiration of the term of a member, the Governor shall appoint a successor to assume duties on July 1 next following. A member shall be eligible for one consecutive reappointment only. In case of a vacancy for any cause, the Governor shall make an appointment to become immediately effective for the unexpired term.

[(3) All appointments of members of the board by the Governor are subject to confirmation by the Senate in the manner provided in ORS 171.562 and 171.565.]

(4) Before entering upon the duties of office, each board member shall subscribe to an oath that the member will faithfully and impartially discharge the duties of office and that the member will support the Constitution of the United States and the Constitution of this state. The oath shall be filed with the Secretary of State.

(5) Each member of the board is entitled to compensation and expenses as provided in ORS 292.495.

**SECTION 8.** ORS 675.130 is amended to read:

675.130. (1) The State Board of Psychologist Examiners shall select one of its members as chairperson, and another as vice chairperson, for such terms and with such powers and duties necessary for the performance of the functions of such offices as the board shall determine.

(2) A majority of the board constitutes a quorum for the transaction of business.

(3) The board shall meet at least once a year at a place, day and hour determined by the board. The board shall also meet at such other times and places as are specified by the call of the chairperson, or of a majority of the members of the board or of the Governor.

(4) The **executive director of the** board shall maintain records of all *[of its]* **board** proceedings under ORS 675.010 to 675.150.

(5) The *[board]* **executive director** shall maintain a register of all living psychologists licensed under ORS 675.010 to 675.150, showing their names, their last-known business addresses, their last-known residential addresses, and the dates and numbers of their licenses.

*[(6) The board may appoint an executive secretary who shall not be a member of the board. The board shall fix the compensation for the executive secretary.]*

## OCCUPATIONAL THERAPY LICENSING BOARD

**SECTION 9.** ORS 675.300 is amended to read:

675.300. (1) The Occupational Therapy Licensing Board may deny, suspend, revoke or refuse to renew a license or may impose probationary conditions where the licensee or applicant has been guilty of:

(a) Unprofessional conduct as defined by the standards established by the board;

(b) Obtaining or attempting to obtain a license by means of fraud, misrepresentation or concealment of material facts;

(c) Violating any lawful order or rule adopted by the board that may affect the health, welfare or safety of the public; or

(d) Gross negligence or incompetence in the performance of professional duties.

(2) The board may suspend or revoke the license of any person licensed under ORS 675.210 to 675.340 and 675.990 (2) if the licensee has *[been adjudged mentally incompetent by a court of competent jurisdiction]* **an impairment as defined in section 1 of this 2009 Act.**

(3) Where the board proposes to refuse to issue or renew a license or proposes to revoke or suspend a license, opportunity for hearing shall be accorded as provided in ORS chapter 183.

(4) Judicial review of orders under subsection (3) of this section shall be in accordance with ORS chapter 183.

(5) Information that the board obtains as part of an investigation into licensee or applicant conduct or as part of a contested case proceeding, consent order or stipulated agreement involving licensee or applicant conduct is confidential as provided under ORS 676.175.

**SECTION 10.** ORS 675.310 is amended to read:

675.310. (1) There is created *[in the Department of Human Services]* the Occupational Therapy Licensing Board. The board is composed of five members appointed by the Governor **and subject to confirmation by the Senate in the manner provided in ORS 171.562 and 171.565. All members of the board must be residents of this state. Of the members of the board:**

(a) Two *[members shall]* **must** be licensed occupational therapists in this state with no less than three years of experience in occupational therapy immediately preceding their appointment[.];

(b) One *[member shall]* **must** be a licensed occupational therapy assistant[.]; **and**

(c) Two *[members shall]* **must** be members of the public[.] **who are not:**

**(A) Otherwise eligible for appointment to the board; or**

**(B) A spouse, domestic partner, child, parent or sibling of an individual who is a licensed occupational therapist or licensed occupational therapy assistant.**

(2)(a) Board members required to be occupational therapists **or occupational therapy assistants** may be selected by the Governor from **a list of three to five nominees for each vacancy**, submitted by:

(A) The Occupational Therapy Association of Oregon [*and the board.*], **if the vacancy is in an occupational therapist position; or**

(B) **Any professional organization representing occupational therapy assistants, if the vacancy is in an occupational therapy assistant position.**

(b) **In selecting the members of the board, the Governor shall strive to balance the representation on the board according to:**

(A) **Geographic areas of this state; and**

(B) **Ethnic group.**

[(2)] (3) Members are entitled to compensation and expenses as provided in ORS 292.495.

[(3)] (4) **Board** members [*shall*] serve a term of four years and may not serve more than two consecutive terms. **A member serves at the pleasure of the Governor.**

**SECTION 11.** ORS 675.320 is amended to read:

675.320. The Occupational Therapy Licensing Board shall have the following powers in addition to powers otherwise granted under ORS 675.210 to 675.340 or necessary to carry out the provisions of ORS 675.210 to 675.340:

(1) To organize and elect from its membership a chairperson and vice chairperson, each of whom shall hold office for one year or until the election and qualification of a successor.

[(2)] *To appoint a director to perform such duties as the board shall prescribe, and whose compensation shall be fixed by the board subject to ORS 240.245.]*

[(3)] (2) To authorize all necessary disbursements to carry out the provisions of ORS 675.210 to 675.340, including, but not limited to, payment for necessary supplies, office equipment and investigations and such other expenditures as provided for in ORS 675.210 to 675.340.

[(4)] (3) To suspend, revoke or invalidate licenses for nonpayment of renewal fees.

[(5)] (4) To restore licenses that have been suspended, revoked or voided.

[(6)] (5) To adopt license and license renewal fees under ORS 675.270, 675.280 and 675.290. The fees must be approved by the Oregon Department of Administrative Services and may not exceed the cost of administering ORS 675.210 to 675.340.

[(7)] (6) To collect license applications and renewal fees.

[(8)] (7) To investigate alleged violations of ORS 675.210 to 675.340.

[(9)] (8) To enforce the provisions of ORS 675.210 to 675.340 and generally supervise the practice of occupational therapy in this state.

[(10)] (9) To make and enforce rules in accordance with ORS chapter 183 for the procedure of the board and for regulating the practice of occupational therapy not inconsistent with the provisions of ORS 675.210 to 675.340.

[(11)] (10) To establish minimum requirements for continuing education to be complied with by all licensees under ORS 675.210 to 675.340.

[(12)] (11) To establish minimum requirements for limited permit to be complied with by all applicants prior to issuance of limited permit. A limited permit shall be issued to a person at the discretion of the board upon application and payment of a permit fee of \$25.

[(13)] (12) To establish official abbreviations that may be used, under ORS 675.220 (1), by persons licensed as occupational therapists or occupational therapy assistants.

[(14)] (13) To establish minimum requirements for supervised field work necessary for applicants under ORS 675.240 or 675.250.

[(15)] (14) To adopt rules that define the scope of the practice of occupational therapy and that reflect national standards for the practice of occupational therapy.

## **STATE BOARD OF CLINICAL SOCIAL WORKERS**

**SECTION 12.** ORS 675.510 is amended to read:

675.510. As used in ORS 675.510 to 675.600, unless the context requires otherwise:

(1) "Board" means the State Board of Clinical Social Workers.

(2) "Clinical social work" means the professional practice of applying principles and methods with individuals, couples, families, children and groups, which include, but are not restricted to:

(a) Providing diagnostic, preventive and treatment services of a psychosocial nature pertaining to personality adjustment, behavior problems, interpersonal dysfunctioning or deinstitutionalization;

(b) Developing a psychotherapeutic relationship to employ a series of problem solving techniques for the purpose of removing, modifying, or retarding disrupted patterns of behavior, and for promoting positive personality growth and development;

(c) Counseling and the use of psychotherapeutic techniques, such as disciplined interviewing which is supportive, directive or insight oriented depending upon diagnosed problems, observation and feedback, systematic analysis, and recommendations;

(d) Modifying internal and external conditions that affect a client's behavior, emotions, thinking, or intrapersonal processes;

(e) Explaining and interpreting the psychosocial dynamics of human behavior to facilitate problem solving; and

(f) Supervising, administering or teaching clinical social work practice.

(3) "Clinical social work associate" means a person who holds a master's degree from an accredited college or university accredited by the Council on Social Work Education whose plan of practice and supervision has been approved by the board, and who is working toward licensure in accordance with ORS 675.510 to 675.600 and rules adopted by the board.

[4] "*Impaired clinical social worker*" means a person unable to perform the practice of clinical social work by reason of mental illness, physical illness or alcohol or other drug abuse.]

[5] (4) "Licensed clinical social worker" means a person licensed under the provisions of ORS 675.510 to 675.600 to practice clinical social work.

[6] (5) "Unprofessional conduct" includes, but is not limited to, any conduct or practice contrary to recognized standards of ethics of the social work profession or any conduct that constitutes or might constitute a danger to the health or safety of a client or the public or in any other manner fails or might fail to adhere to the recognized standards of the profession.

**SECTION 13.** ORS 675.540 is amended to read:

675.540. (1) The State Board of Clinical Social Workers may impose any or all of the sanctions specified in subsection (2) of this section, upon proof, after a hearing pursuant to the provisions of ORS chapter 183 relating to a contested case, that a person:

(a) Has been convicted in this or any other state of a crime that is a felony in this state;

(b) Has been convicted of a felony in a federal court;

(c) Is unable to perform the practice of clinical social work by reason of [*mental illness, physical illness or alcohol or other drug abuse;*] **physical illness;**

**(d) Has an impairment as defined in section 1 of this 2009 Act;**

[*d*] (e) Has been grossly negligent or has engaged in unprofessional conduct in the practice of clinical social work; or

[*e*] (f) Has violated one or more of the rules of the board pertaining to the certification or licensing of clinical social workers.

(2) Pursuant to the provisions of subsection (1) of this section, the board may:

(a) Deny, suspend, revoke or refuse to renew any certificate or license issued under ORS 675.510 to 675.600.

(b) Place a licensed clinical social worker on probation and impose conditions or limits on the scope of practice of a licensed clinical social worker.

(c) Impose a civil penalty not to exceed \$1,000.

(3) The expiration of a license or the voluntary surrender of a license by the licensee shall not deprive the board of jurisdiction to proceed with any investigation of, or any action or disciplinary proceedings against, the licensee.

(4) Information that the board obtains as part of an investigation into licensee or applicant conduct or as part of a contested case proceeding, consent order or stipulated agreement involving licensee or applicant conduct is confidential as provided under ORS 676.175.



(5) Upon receipt of a complaint under ORS 675.510 to 675.600, the board shall conduct an investigation as described under ORS 676.165.

**SECTION 14.** ORS 675.583 is amended to read:

675.583. (1) A licensed clinical social worker shall report to the State Board of Clinical Social Workers any information the licensed clinical social worker has that appears to show that a licensed clinical social worker *[is or may be an impaired clinical social worker, or]* **has or may have a physical illness that makes the clinical social worker unable to practice, or** may be guilty of unprofessional conduct according to the guidelines of the code of ethics, to the extent that disclosure does not conflict with the requirements of ORS 675.580.

(2) Any information that the board obtains pursuant to subsection (1) of this section is confidential as provided under ORS 676.175.

(3) Any person who reports or provides information to the board under subsection (1) of this section in good faith shall not be subject to an action for civil damages as a result thereof.

**SECTION 15.** ORS 675.590 is amended to read:

675.590. (1) There is established a State Board of Clinical Social Workers. **The board shall consist of seven members appointed by the Governor and subject to confirmation by the Senate in the manner provided in ORS 171.562 and 171.565. All members of the board must be residents of this state. Of the members of the board:**

**(a) Four members must be licensed clinical social workers who are licensed in accordance with the provisions of ORS 675.510 to 675.600; and**

**(b) Three members must be members of the public who have demonstrated an interest in the field of clinical social work and who are not:**

**(A) Licensed clinical social workers; or**

**(B) A spouse, domestic partner, child, parent or sibling of a licensed clinical social worker.**

*[(2) The Governor shall appoint seven members to the board, consisting of members as specified in subsection (4) of this section.]*

**(2)(a) Board members required to be licensed clinical social workers may be appointed from a list of three to five nominees for each vacancy, submitted by any professional organization that represents clinical social workers.**

**(b) In selecting the members of the board, the Governor shall strive to balance the representation on the board according to:**

**(A) Geographic areas of this state; and**

**(B) Ethnic group.**

(3) The term of office of each member is four years, but a member serves at the pleasure of the Governor. Before the expiration of the term of a member, the Governor shall appoint a successor whose term begins on July 1 next following. A member is eligible for one consecutive reappointment. If there is a vacancy for any cause, the Governor shall make an appointment to become immediately effective for the unexpired term.

*[(4) The composition of the board shall be as follows:]*

*[(a) Four members shall be licensed clinical social workers who are licensed in accordance with the provisions of ORS 675.510 to 675.600; and]*

*[(b) Three members shall be public citizens who have demonstrated an interest in the field of clinical social work.]*

*[(5)]* **(4) Members of the board** are entitled to compensation and expenses as provided in ORS 292.495.

**SECTION 16.** ORS 675.600 is amended to read:

675.600. *[(1)]* The State Board of Clinical Social Workers shall:

*[(a)]* **(1)** Pursuant to ORS chapter 183, make rules necessary to carry out the provisions of ORS 675.510 to 675.600;

*[(b)]* **(2)** Publish annually a list of the names and addresses of all persons who have been certified or licensed under ORS 675.510 to 675.600;

[(c)] (3) Establish a program for [*impaired*] clinical social workers **who have an impairment as defined in section 1 of this 2009 Act or who are unable to practice due to physical illness**, to assist licensed clinical social workers to regain or retain their certification or licensure and impose the requirement of participation as a condition to reissuance or retention of the certificate or license;

[(d)] (4) Establish a voluntary arbitration procedure that may be invoked with the consent of clients and the licensed clinical social workers whereby disputes between clients and workers may be resolved; and

[(e)] (5) Report to the Legislative Assembly on its activities regarding the certification or licensure of clinical social workers during the preceding biennium.

[(2)] *The board may appoint an administrator who shall not be a member of the board. The board shall fix the compensation for the administrator.*]

## OREGON BOARD OF LICENSED PROFESSIONAL COUNSELORS AND THERAPISTS

**SECTION 17.** ORS 675.745 is amended to read:

675.745. (1) The Oregon Board of Licensed Professional Counselors and Therapists may deny, suspend, revoke or refuse to issue or to renew any license issued under ORS 675.715 to 675.835 upon proof that the applicant for licensure or the licensee:

(a) Has been convicted of violating ORS 675.825 or of a crime in this or any other state or territory or against the federal government that brings into question the competence of the licensee in the role of a counselor or a therapist;

(b) Is unable to perform the practice of professional counseling or marriage and family therapy by reason of [*mental illness, physical illness, drug addiction or alcohol abuse*] **physical illness**;

**(c) Has an impairment as defined in section 1 of this 2009 Act.**

[(c)] (d) Has been grossly negligent in the practice of professional counseling or marriage and family therapy;

[(d)] (e) Has violated one or more of the rules of the board pertaining to the licensure of professional counselors or licensed marriage and family therapists;

[(e)] (f) Has failed to file a professional disclosure statement or has filed a false, incomplete or misleading professional disclosure statement;

[(f)] (g) Has practiced outside the scope of activities, including administering, constructing or interpreting tests, for which the licensee has individual training and qualification; or

[(g)] (h) Has been disciplined by a state mental health licensing board or program in this or any other state for violation of competency or conduct standards.

(2)(a) The board may reprimand or impose probation on a licensee or an intern registered under ORS 675.720 upon proof of any of the grounds for discipline provided in subsection (1) of this section.

(b) If the board elects to place a licensee or a registered intern on probation, the board may impose:

(A) Restrictions on the scope of practice of the licensee or intern;

(B) Requirements for specific training;

(C) Supervision of the practice of the licensee or intern; or

(D) Other conditions the board finds necessary for the protection of the public.

(3) The board may initiate action against persons violating any provision of ORS 675.715 to 675.835 or any rules adopted by the board.

(4) Pursuant to ORS 183.745, the board may impose a civil penalty of not more than \$1,000 for each violation of subsection (1) or (2) of this section.

(5) Information that the board obtains as part of an investigation into licensee or applicant conduct or as part of a contested case proceeding, consent order or stipulated agreement involving licensee or applicant conduct is confidential as provided under ORS 676.175.

(6) In addition to the actions authorized by subsections (1) and (2) of this section, the board may take such disciplinary action as the board in its discretion finds proper, including but not limited to the assessment of the costs of the disciplinary process.

**SECTION 18.** ORS 675.775 is amended to read:

675.775. (1) The Oregon Board of Licensed Professional Counselors and Therapists is established.

[(2)] The board [*shall consist*] **consists** of seven members [*who shall be*] appointed by the Governor[,] **and subject to confirmation by the Senate in the manner provided in ORS 171.562 and 171.565. All members of the board must be residents of this state. Of the members of the board:**

(a) **Three must be licensed as professional counselors under ORS 675.715;**

(b) **Two must be licensed as marriage and family therapists under ORS 675.715;**

(c) **One must be from the faculty of a school within this state that has programs to train persons to become professional counselors or marriage and family therapists; and**

(d) **One must be a member of the public who has demonstrated an interest in the fields of professional counseling and marriage and family therapy but who is not a:**

(A) **Licensed professional counselor or marriage and family therapist; or**

(B) **Spouse, domestic partner, child, parent or sibling of a licensee.**

**(2)(a) Board members required to be licensees may be selected by the Governor from a list of three to five nominees for each vacancy, submitted by any professional organization representing licensees.**

[(3)] (b) In selecting the members of the board, the Governor shall strive to balance the representation according to:

(A) Geographic areas of this state[, *gender, age*]; and

(B) Ethnic group.

[(4) *The board shall consist of:*]

[(a) *Three members who are persons licensed as professional counselors under ORS 675.715;*]

[(b) *Two members who are persons licensed as marriage and family therapists under ORS 675.715;*]

[(c) *One member from the faculty of a school within this state that has programs to train persons to become professional counselors or marriage and family therapists; and*]

[(d) *One member from the public who has demonstrated an interest in the fields of professional counseling and marriage and family therapy.*]

[(5) *Statewide counselor and marriage and family therapist organizations may recommend names of qualified persons to the Governor at the time for filling vacancies on the board.*]

[(6)] (3) The term of office of each member is three years, but a member serves at the pleasure of the Governor. By October 1 of each year, the Governor shall appoint persons to fill positions on the board that are due to become vacant on October 1 of that year. A member is eligible for one consecutive reappointment. If there is a vacancy for any cause, the Governor shall make an appointment to become immediately effective for the unexpired term.

**SECTION 19.** ORS 675.785 is amended to read:

675.785. The Oregon Board of Licensed Professional Counselors and Therapists has the following powers:

(1) In accordance with the applicable provisions of ORS chapter 183, the board shall adopt rules necessary for the administration of the laws the board is charged with administering.

(2) Subject to any applicable provisions of the State Personnel Relations Law, the board may appoint, prescribe the duties and fix the compensation of [*an administrator and other*] employees of the board necessary to carry out the duties of the board.

(3) The board may impose nonrefundable fees in an amount set by rule for the following:

(a) License application.

(b) First issuance of a license.

(c) Renewal of a license.

(d) Late filing of a license renewal.

(e) Renewal of registration as an intern.

(f) Examinations. Examination fees shall not exceed the costs incurred in administering the particular examination. Fees established under this subsection are subject to prior approval of the Oregon Department of Administrative Services and a report to the Emergency Board prior to adopting the fees and shall be within the budget authorized by the Legislative Assembly as that budget may be modified by the Emergency Board.

(4) The board shall:

(a) Maintain a register of all current licensed professional counselors and marriage and family therapists.

(b) Annually publish a directory listing all current licensed professional counselors and marriage and family therapists. The directory shall be available to the public, for which the board may collect a publication fee.

(5) The board shall:

(a) Investigate alleged violations of the provisions of ORS 675.715 to 675.835 or rules adopted under authority of the board.

(b) Establish procedures to review the complaints of clients of licensees of the board. Upon receipt of a complaint under ORS 675.715 to 675.835 against any licensed or unlicensed person, the board shall conduct an investigation as described under ORS 676.165.

(6) The board shall report to the Legislative Assembly concerning the activities of the board during the preceding biennium.

(7) The board shall form standards committees to establish, examine and pass on the qualifications of applicants to practice professional counseling or marriage and family therapy in this state. The standards committee for professional counselors shall be made up of the professional counselors on the board, the faculty member and the public member. The standards committee for marriage and family therapists shall be made up of the marriage and family members of the board, the faculty member and the public member.

(8) The board shall grant licenses to applicants who qualify to practice professional counseling or marriage and family therapy in this state upon compliance with ORS 675.715 to 675.835 and the rules of the board.

(9) The board may administer oaths, take depositions, defray legal expenses and issue subpoenas to compel the attendance of witnesses and the production of documents or written information necessary to carry out ORS 675.715 to 675.835.

(10) The board may adopt a seal to be affixed to all licenses.

(11) The board shall adopt a code of ethics for licensees. The board may use the ethical codes of professional counseling and marriage and family therapy associations as models for the code established by the board.

(12) The board may set academic and training standards necessary under ORS 675.715 to 675.835, including, but not limited to, the adoption of rules to establish semester hour equivalents for qualification for licensing where quarter hours are required under ORS 675.715 to 675.835.

(13) The board shall require the applicant for a professional counselor license or a marriage and family therapy license to receive a passing score on an examination of competency in counseling or marriage and family therapy. The examination may be the examination given nationally to certify counselors, or in the case of marriage and family therapy, the examination approved by the Association of Marital and Family Therapy Regulatory Boards.

(14) The standards committee shall establish standards and requirements for continuing education and supervision, as appropriate. [*The standards and requirements shall be in effect July 1, 1992.*]

(15) The board shall establish a program for licensees whose ability to perform professional counseling is impaired to assist those licensees in regaining or retaining their licensure and shall impose the requirement of participation as a condition to reissuance or retention of the license.

(16) For the purpose of requesting a state or nationwide criminal records check under ORS 181.534, the board may require the fingerprints of a person who is:

- (a) Applying for a license that is issued by the board;
- (b) Applying for renewal of a license that is issued by the board; or
- (c) Under investigation by the board.

## OREGON MEDICAL BOARD

**SECTION 20.** ORS 426.385 is amended to read:

426.385. (1) Every mentally ill person committed to the Department of Human Services shall have the right to:

- (a) Communicate freely in person and by reasonable access to telephones;
- (b) Send and receive sealed mail, except that this right may be limited for security reasons in state institutions as described in ORS 426.010;
- (c) Wear the clothing of the person;
- (d) Keep personal possessions, including toilet articles;
- (e) Religious freedom;
- (f) A private storage area with free access thereto;
- (g) Be furnished with a reasonable supply of writing materials and stamps;
- (h) A written treatment plan, kept current with the progress of the person;
- (i) Be represented by counsel whenever the substantial rights of the person may be affected;
- (j) Petition for a writ of habeas corpus;
- (k) Not be required to perform routine labor tasks of the facility except those essential for treatment;
- (L) Be given reasonable compensation for all work performed other than personal housekeeping duties;
- (m) Daily access to fresh air and the outdoors, except that this right may be limited when it would create significant risk of harm to the person or others;
- (n) Such other rights as may be specified by rule; and
- (o) Exercise all civil rights in the same manner and with the same effect as one not admitted to the facility, including, but not limited to, the right to dispose of real property, execute instruments, make purchases, enter contractual relationships, and vote, unless the person has been adjudicated incompetent and has not been restored to legal capacity. Disposal of personal property in possession of the person in a state institution described in ORS 426.010 is subject to limitation for security reasons.

(2)(a) A person must be immediately informed, verbally and in writing, of any limitation:

- (A) Of the right to send or receive sealed mail under subsection (1)(b) of this section;
- (B) Regarding the disposal of personal property under subsection (1)(o) of this section; and
- (C) Of the right to daily access to fresh air and the outdoors under subsection (1)(m) of this section.

(b) Any limitation under this subsection and the reasons for the limitation must be stated in the person's written treatment plan.

(c) The person has the right to challenge any limitation under this subsection pursuant to rules adopted by the department. The person must be informed, verbally and in writing, of this right.

(3) Mentally ill persons committed to the department shall have the right to be free from potentially unusual or hazardous treatment procedures, including convulsive therapy, unless they have given their express and informed consent or authorized the treatment pursuant to ORS 127.700 to 127.737. This right may be denied to such persons for good cause as defined in administrative rule only by the director of the facility in which the person is confined, but only after consultation with and approval of an independent examining physician. Any denial shall be entered into the patient's treatment record and shall include the reasons for the denial. No patient shall be subjected to psychosurgery, as defined in ORS 677.190 [(22)(b)] **(21)(b)**.

(4) Mechanical restraints shall not be applied to a person admitted to a facility unless it is determined by the chief medical officer of the facility or designee to be required by the medical needs

of the person. Every use of a mechanical restraint and the reasons therefor shall be made a part of the clinical record of the person over the signature of the chief medical officer of the facility or designee.

(5) Nothing in this section prevents the department from acting to exclude contraband from its facilities and to prevent possession or use of contraband in its facilities.

(6) As used in this section:

(a) "Contraband" has the meaning given that term in ORS 162.135.

(b) "Security reasons" means the protection of the mentally ill person from serious and immediate harm and the protection of others from threats or harassment as defined by rule of the department.

**SECTION 21.** ORS 677.010 is amended to read:

677.010. As used in this chapter, subject to the exemptions in ORS 677.060 and unless the context requires otherwise:

(1) "Approved internship" means the first year of post-graduate training served in a hospital that is approved by the board or by the Accreditation Council of Graduate Medical Education, the American Osteopathic Association or the Royal College of Physicians and Surgeons of Canada.

(2) "Approved school of medicine" means a school offering a full-time resident program of study in medicine or osteopathy leading to a degree of Doctor of Medicine or Doctor of Osteopathy, such program having been fully accredited or conditionally approved by the Liaison Committee on Medical Education, or its successor agency, or the American Osteopathic Association, or its successor agency, or having been otherwise determined by the board to meet the association standards as specifically incorporated into board rules.

(3) "Board" means the Oregon Medical Board.

(4) "Diagnose" means to examine another person in any manner to determine the source or nature of a disease or other physical or mental condition, or to hold oneself out or represent that a person is so examining another person. It is not necessary that the examination be made in the presence of such other person; it may be made on information supplied either directly or indirectly by such other person.

(5) "Dispense" means the preparation and delivery of a prescription drug, pursuant to a lawful order of a practitioner, in a suitable container appropriately labeled for subsequent administration to or use by a patient or other individual entitled to receive the prescription drug.

(6) "Dispensing physician" means a physician or podiatric physician and surgeon who purchases prescription drugs for the purpose of dispensing them to patients or other individuals entitled to receive the prescription drug and who dispenses them accordingly.

(7) "Drug" means all medicines and preparations for internal or external use of humans, intended to be used for the cure, mitigation or prevention of diseases or abnormalities of humans, which are recognized in any published United States Pharmacopoeia or National Formulary, or otherwise established as a drug.

(8) "Fellow" means an individual who has not qualified under ORS 677.100 (1) and (2) and who is pursuing some special line of study as part of a supervised program of a school of medicine, a hospital approved for internship or residency training, or an institution for medical research or education that provides for a period of study under the supervision of a responsible member of that hospital or institution, such school, hospital or institution having been approved by the board.

(9) "Intern" means an individual who has entered into a hospital or hospitals for the first year of post-graduate training.

(10) "License" means permission to practice, whether by license, registration or certification.

(11) "Licensee" means an individual holding a valid license issued by the board.

*[(12) "Licensee with an impairment" means an individual licensed under this chapter who is unable to practice the profession for which the individual is licensed with reasonable skill and safety by reason of mental illness; physical illness, including, but not limited to, physical deterioration that adversely affects cognition, motor or perceptive skill; or habitual or excessive use or abuse of drugs, alcohol or other substances that impair ability.]*

(12) **“Physical incapacity” means a condition that renders an individual licensed under this chapter unable to practice under that license with professional skill and safety by reason of physical illness or physical deterioration that adversely affects cognition, motor or perceptible skill.**

(13) “Physician” means any person who holds a degree of Doctor of Medicine or Doctor of Osteopathy.

(14) “Podiatric physician and surgeon” means a podiatric physician and surgeon licensed under ORS 677.805 to 677.840 to treat ailments of the human foot, ankle and tendons directly attached to and governing the function of the foot and ankle.

(15) “Prescribe” means to direct, order or designate the use of or manner of using by spoken or written words or other means.

(16) “Resident” means an individual who, after the first year of post-graduate training, in order to qualify for some particular specialty in the field of medicine, pursues a special line of study as part of a supervised program of a hospital approved by the board.

**SECTION 22.** ORS 677.188 is amended to read:

677.188. As used in ORS 677.190, unless the context requires otherwise:

(1) “Fraud or misrepresentation” means the intentional misrepresentation or misstatement of a material fact, concealment of or failure to make known any material fact, or any other means by which misinformation or a false impression knowingly is given.

(2) “Fraudulent claim” means a claim submitted to any patient, insurance or indemnity association, company or individual for the purpose of gaining compensation, which the person making the claim knows to be false.

(3) “Manifestly incurable condition, sickness, disease or injury” means one that is declared to be incurable by competent physicians and surgeons or by other recognized authority.

(4) “Unprofessional or dishonorable conduct” means conduct unbecoming a person licensed to practice medicine or podiatry, or detrimental to the best interests of the public, and includes:

(a) Any conduct or practice contrary to recognized standards of ethics of the medical or podiatric profession or any conduct or practice which does or might constitute a danger to the health or safety of a patient or the public or any conduct, practice or condition which does or might [*impair*] **adversely affect** a physician’s or podiatric physician and surgeon’s ability safely and skillfully to practice medicine or podiatry;

(b) Willful performance of any surgical or medical treatment which is contrary to acceptable medical standards; and

(c) Willful and repeated ordering or performance of unnecessary laboratory tests or radiologic studies; administration of unnecessary treatment; employment of outmoded, unproved or unscientific treatments; failure to obtain consultations when failing to do so is not consistent with the standard of care; or otherwise utilizing medical service for diagnosis or treatment which is or may be considered inappropriate or unnecessary.

**SECTION 23.** ORS 677.190 is amended to read:

677.190. The Oregon Medical Board 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 Oregon Medical Board; 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.*] **Impairment as defined in section 1 of this 2009 Act.**

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

[(15)] (14) 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)] (15) 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)] (16) Failing to designate the degree appearing on the license under circumstances described in ORS 677.184 (3).

[(18)] (17) 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)] (18) Failing to report the change of the location of practice of the licensee as required by ORS 677.172.



[20] (19) [*Adjudication of or admission to a hospital for mental illness or*] Imprisonment as provided in ORS 677.225.

[21] (20) Making a fraudulent claim.

[22)(a)] (21)(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] (22) Refusing an invitation for an informal interview with the board requested under ORS 677.415.

[24] (23) Violation of the federal Controlled Substances Act.

[25] (24) 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.

[26] (25) 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] (26) 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, **physical incapacity** or [*mental or physical*] impairment.

**SECTION 24.** ORS 677.235 is amended to read:

677.235. (1) The Oregon Medical Board consists of 12 members appointed by the Governor[.] **and subject to confirmation by the Senate in the manner provided in ORS 171.562 and 171.565. All members of the board must be residents of this state. Of the members of the board:**

(a) Seven [*of the members shall be appointed from among persons having*] **must have** the degree of Doctor of Medicine[.];

(b) Two [*from among persons having*] **must have** the degree of Doctor of Osteopathy [*and*];

(c) One [*from among persons having*] **must have** the degree of Doctor of Podiatric Medicine[. *Of the seven members who hold the degree of Doctor of Medicine, there shall be at least one member appointed from each federal congressional district. In addition to the 10 named persons described, there shall be appointed*]; **and**

(d) Two [*public*] **must be** members of the **public** representing health consumers[. *All persons appointed must have been residents of this state for at least seven years.*] **who are not:**

(A) **Otherwise eligible for appointment to the board; or**

(B) **A spouse, domestic partner, child, parent or sibling of an individual having the degree of Doctor of Medicine, Doctor of Osteopathy or Doctor of Podiatric Medicine.**

(2)(a)(A) **Board members required to possess the degree of Doctor of Medicine may be selected by the Governor from a list of three to five physicians for each physician member of the board whose term expires in that year, submitted by the Oregon Medical Association not later than February 1.**

(B) **Board members required to possess the degree of Doctor of Osteopathy may be selected by the Governor from a list of three to five qualified physicians for each vacancy, submitted by the Osteopathic Physicians and Surgeons of Oregon, Inc., not later than February 1 of each odd-numbered year.**

(C) **The board member required to possess the degree of Doctor of Podiatric Medicine may be selected by the Governor from a list of three to five qualified physicians submitted by the Oregon Podiatric Medical Association not later than February 1 of each fourth year.**

(b) The physician members and the member who is a podiatric physician and surgeon must have been in the active practice of their profession for at least five years immediately preceding their appointment.

(c) Neither the public members nor any person *[within the immediate family of the public members shall]* **who is a spouse, domestic partner, child, parent or sibling of a public member** may be employed as a health professional or in any health-related industry. *[The public members shall be members of the investigative committee of the board.]*

**(d)(A) In selecting the members of the board, the Governor shall strive to balance the representation on the board according to geographic areas of this state and ethnic group.**

**(B) Of the seven members who hold the degree of Doctor of Medicine, there shall be at least one member appointed from each federal congressional district.**

*[(2) Not later than February 1 of each year, the Oregon Medical Association shall nominate three qualified physicians for each physician member of the board whose term expires in that year, and shall certify its nominees to the Governor. Not later than February 1 of each odd-numbered year, the Osteopathic Physicians and Surgeons of Oregon, Inc., shall nominate three physicians possessing the degree of Doctor of Osteopathy and shall certify its nominees to the Governor. Not later than February 1 of each third year, the Oregon Podiatric Medical Association shall nominate three podiatric physicians and surgeons possessing the degree of Doctor of Podiatric Medicine and shall certify its nominees to the Governor. The Governor shall consider these nominees in selecting successors to retiring board members.]*

**(3)(a)** *[Each member of the board shall serve for a term of three years beginning]* **The term of office of each board member is three years, but a member serves at the pleasure of the Governor. A term begins** on March 1 of the year the member is appointed and *[ending]* **ends** on the last day of February of the third year thereafter. No member shall serve more than two consecutive terms.

**(b)** If a vacancy occurs on the board, another qualifying member possessing the same professional degree or fulfilling the same public capacity as the person whose position has been vacated shall be appointed as provided in this section to fill the unexpired term.

*[(4) All appointments of members of the board by the Governor are subject to confirmation by the Senate in the manner provided in ORS 171.562 and 171.565.]*

**SECTION 25.** ORS 677.250 is amended to read:

677.250. The **executive director of the Oregon Medical Board** shall keep a record of all *[the]* **board** proceedings *[thereof]*, and also a record of all applicants for a license, together with their ages, the time such applicants have spent in the study and practice of medicine, the name and location of all institutions granting to applicants degrees in medicine and such other information as the board may deem advisable. The record also shall show whether such applicants were rejected or licensed under this chapter. The record is prima facie evidence of all the matters therein recorded, and failure of a person's name to appear in the record is prima facie evidence that such person does not have a license to practice medicine in this state.

**SECTION 26.** ORS 677.270 is amended to read:

677.270. If any licensee fails to comply with any lawful rule or order of the Oregon Medical Board, or fails to obey any subpoena issued by the board, or refuses to testify concerning any matter on which the licensee may lawfully be interrogated by the board, the board may apply to any circuit court of this state, or the judge thereof, to compel obedience. The court or judge, upon such application, shall institute proceedings for contempt. The remedy provided in this section is in addition to, and not exclusive of, the authority of the board to discipline licensees for violations of ORS 677.190 *[(18) and (23)]* **(17) and (22)**.

**SECTION 27.** ORS 677.275 is amended to read:

677.275. *[(1) The Oregon Medical Board may appoint an executive director, who need not be a member of the board, and fix the compensation. The executive director shall be under the supervision and control of the board, and may discharge all duties as provided in the rules of the board or as directed by the board.]*

[2] Each administrative law judge conducting hearings on behalf of the board is vested with the full authority of the board to schedule and conduct hearings on behalf and in the name of the board on all matters referred by the board, including issuance of licenses, proceedings for placing licensees on probation and for suspension and revocation of licenses, and shall cause to be prepared and furnished to the board, for decision thereon by the board, the complete written transcript of the record of the hearing. This transcript shall contain all evidence introduced at the hearing and all pleas, motions and objections, and all rulings of the administrative law judge. Each administrative law judge may administer oaths and issue summonses, notices and subpoenas, but may not place any licensee on probation or issue, refuse, suspend or revoke a license.

**SECTION 28.** ORS 677.415 is amended to read:

677.415. (1) As used in this section:

(a) "Health care facility" means a facility licensed under ORS 441.015 to 441.087.

(b) "Official action" means a restriction, limitation, loss or denial of privileges of a licensee to practice medicine, or any formal action taken against a licensee by a government agency or a health care facility based on a finding of medical incompetence, unprofessional conduct, **physical incapacity** or [licensee] impairment.

(2) The Oregon Medical Board on the board's own motion may investigate any evidence that appears to show that a licensee licensed by the board is or may be medically incompetent or is or may be guilty of unprofessional or dishonorable conduct or is or may be a licensee with **a physical incapacity or an impairment as defined in section 1 of this 2009 Act.**

(3) A licensee licensed by the Oregon Medical Board, the Oregon Medical Association, Inc., or any component society thereof, the Osteopathic Physicians and Surgeons of Oregon, Inc. or the Oregon Podiatric Medical Association shall report within 10 working days, and any other person may report, to the board any information such licensee, association, society or person may have that appears to show that a licensee is or may be medically incompetent or is or may be guilty of unprofessional or dishonorable conduct or is or may be a licensee with **a physical incapacity.** [an impairment. However, a licensee who is treating another licensee for a mental disability has a duty to report within 10 working days the licensee patient unless, in the opinion of the treating licensee, the patient is not impaired.]

(4) A licensee shall self-report within 10 working days any official action taken against the licensee.

(5) A health care facility shall report to the Oregon Medical Board any official action taken against a licensee within 10 business days of the date of the official action.

(6) A licensee's voluntary withdrawal from the practice of medicine or podiatry, voluntary resignation from the staff of a health care facility or voluntary limitation of the licensee's staff privileges at such a health care facility shall be promptly reported to the Oregon Medical Board by the health care facility and the licensee if the licensee's voluntary action occurs while the licensee is under investigation by the health care facility or a committee thereof for any reason related to possible medical incompetence, unprofessional conduct or [mental or] **physical incapacity or impairment as defined in section 1 of this 2009 Act.**

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

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

(B) Information that appears to show that a licensee is or may be medically incompetent, is or may be guilty of unprofessional or dishonorable conduct or is or may be a licensee with [an impairment] **a physical incapacity.**

(b) The Oregon Medical Board may not require in a report made in accordance with subsection (5) or (6) of this section more than:

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

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

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

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

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

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

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

(B) The specific restriction, limitation, suspension, loss or denial of the licensee's staff privileges and the effective date or term of the restriction, limitation, suspension, loss or denial.

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

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

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

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

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

(11) A person who reports in good faith to the Oregon Medical Board as required by this section is immune from civil liability by reason of making the report.

**SECTION 29.** ORS 677.417 is amended to read:

677.417. The Oregon Medical Board shall determine by rule what constitutes medical incompetence, unprofessional conduct, **physical incapacity** or [*licensee*] impairment for the purposes of ORS chapter 677.

**SECTION 30.** ORS 677.655, as amended by section 5, chapter 796, Oregon Laws 2007, is amended to read:

677.655. (1) All records and meetings of the Health Professionals Program Supervisory Council are confidential and shall not be subject to public disclosure, nor shall the records be admissible as evidence in any judicial, administrative, arbitration or mediation proceeding except proceedings between the licensee or applicant and the Oregon Medical Board. Case reviews, deliberations and communications regarding any participant in the program are exempt from the provisions of ORS 192.610 to 192.690.

(2) The members, employees, contractors and past or present clients of the council shall not be subject to the disclosure requirements in ORS 677.415.

(3) Any licensee who in good faith voluntarily participates in an approved diversion program and successfully completes the program shall not be subject to disciplinary investigation or sanctions unless the licensee is suspected of a violation described in ORS 677.190, except for ORS 677.190 (1)(a), by the manner of obtaining or self-administration of intoxicants, drugs or controlled substances or a violation described in ORS 677.190 (7), [(13), (20) or (24)] **(19) or (23)**.

(4) Except as otherwise provided in ORS 677.615 to 677.677, disclosures of client records, including but not limited to mental health records, by members, employees, contractors and past or

present clients of the council are subject to 42 C.F.R. part 2, sections 2.1 through 2.67. For the purposes of this subsection, medical health records and communications regarding mental health treatment shall be treated with the same confidentiality protections as alcohol and drug abuse patient records under 42 C.F.R. part 2, sections 2.1 through 2.67.

## OREGON STATE BOARD OF NURSING

**SECTION 31.** ORS 678.111 is amended to read:

678.111. In the manner prescribed in ORS chapter 183 for a contested case:

(1) Issuance of the license to practice nursing, whether by examination or by indorsement, of any person may be refused or the license may be revoked or suspended or the licensee may be placed on probation for a period specified by the Oregon State Board of Nursing and subject to such condition as the board may impose or may be issued a limited license or may be reprimanded or censured by the board, for any of the following causes:

(a) Conviction of the licensee of crime where such crime bears demonstrable relationship to the practice of nursing. A copy of the record of such conviction, certified to by the clerk of the court entering the conviction, shall be conclusive evidence of the conviction.

(b) Gross incompetence or gross negligence of the licensee in the practice of nursing at the level for which the licensee is licensed.

(c) Any willful fraud or misrepresentation in applying for or procuring a license or renewal thereof.

(d) Fraud or deceit of the licensee in the practice of nursing or in admission to such practice.

(e) [*Use of any controlled substance or intoxicating liquor to an extent or in a manner dangerous or injurious to the licensee or others or to an extent that such use impairs the ability to conduct safely the practice for which the licensee is licensed.*] **Impairment as defined in section 1 of this 2009 Act.**

(f) Conduct derogatory to the standards of nursing.

(g) Violation of any provision of ORS 678.010 to 678.445 or rules adopted thereunder.

(h) Revocation or suspension of a license to practice nursing by any state or territory of the United States, or any foreign jurisdiction authorized to issue nursing credentials whether or not that license or credential was relied upon in issuing that license in this state. A certified copy of the order of revocation or suspension shall be conclusive evidence of such revocation or suspension.

(i) Physical [*or mental*] condition that makes the licensee unable to conduct safely the practice for which the licensee is licensed.

(j) Violation of any condition imposed by the board when issuing a limited license.

(2) A certificate of special competence may be denied or suspended or revoked for the reasons stated in subsection (1) of this section.

(3) A license or certificate in inactive status may be denied or suspended or revoked for the reasons stated in subsection (1) of this section.

(4) A license or certificate in retired status may be denied or suspended or revoked for any cause stated in subsection (1) of this section.

**SECTION 32.** ORS 678.112 is amended to read:

678.112. (1) When a person licensed to practice nursing voluntarily seeks treatment for [*chemical dependency or an emotional*] **an impairment** or physical problem that otherwise may lead to formal disciplinary action under ORS 678.111, the Oregon State Board of Nursing may abstain from taking such formal disciplinary action if the board finds that the licensee can be treated effectively and that there is no danger to the public health, safety or welfare.

(2) If the board abstains from taking such formal disciplinary action, it may require the licensee to be subject to the voluntary monitoring program as established by the board.

(3) All records of the voluntary monitoring program are confidential and shall not be subject to public disclosure, nor shall the records be admissible as evidence in any judicial proceedings.

(4) A licensee voluntarily participating in the voluntary monitoring program shall not be subject to investigation or disciplinary action by the board for the same offense, if the licensee complies with the terms and conditions of the monitoring program.

(5) The board shall establish by rule criteria for eligibility to participate in the voluntary monitoring program and criteria for successful completion of the program.

(6) Licensees who elect not to participate in the voluntary monitoring program or who fail to comply with the terms of participation shall be reported to the board for formal disciplinary action under ORS 678.111.

**NOTE:** Section 33 was deleted by amendment. Subsequent sections were not renumbered.

**SECTION 34.** ORS 678.140 is amended to read:

678.140. (1) There is created an Oregon State Board of Nursing composed of nine members[,] **appointed by the Governor and subject to confirmation by the Senate in the manner provided in ORS 171.562 and 171.565. All members of the board must be residents of this state. Of the members of the board:**

(a) Five *[of whom shall]* **must** be registered nurses[.];

(b) Two *[of whom shall]* **must** be licensed practical nurses; and

(c) Two *[of whom shall]* **must** be members of the public who are otherwise not eligible for appointment to the board.

**(2)(a) Board members required to be nurse members may be selected by the Governor from a list of three to five nominees for each vacancy, submitted two months before the expiration of the term of office of a nurse member by:**

**(A) The Oregon Nurses Association or any other professional organization representing registered nurses, if the vacancy is in a registered nurse position; or**

**(B) The Oregon Licensed Practical Nurses Association or any other professional organization representing licensed practical nurses, if the vacancy is in a licensed practical nurse position.**

**(b) Each nurse member must:**

**(A) Be currently licensed and not under disciplinary status with the board in the category for which appointed; and**

**(B) Have at least five years' experience in the category in which the nurse member is appointed, three of which were immediately prior to appointment.**

**(c) The public members and any person who is a spouse, domestic partner, child, parent or sibling of a public member may not be employed as a health professional or in any health-related industry.**

**(2) (d) In making appointments of registered nurses, the Governor shall *[consider geographic balance in making the appointments and shall]* ensure that the following areas of practice are represented on the board:**

***[(a)] (A) One nursing educator;***

***[(b)] (B) One nursing administrator;***

***[(c)] (C) Two nonsupervisory nurses involved in direct patient care; and***

***[(d)] (D) One nurse practitioner.***

(3) The members of the board shall be appointed by the Governor for terms of three years, beginning on January 1. No member shall be eligible to appointment for more than two consecutive terms. **A member serves at the pleasure of the Governor.** An unexpired term of a board member shall be filled in the same manner as an original appointment is made. The appointment shall be for the remainder of the unexpired term. *[All appointments of members of the board by the Governor are subject to confirmation by the Senate pursuant to section 4, Article III of the Oregon Constitution.]*

*[(4) Two months before the expiration of the term of office of a nurse member of the board, or when a vacancy occurs in the office of a nurse member, the Oregon Nurses Association or any other organization representing registered nurses, if the vacancy is in a registered nurse position, or the Oregon Licensed Practical Nurses Association or any other organization representing licensed practical nurses, if the vacancy is in a licensed practical nurse position, may submit a list of three names of persons*

qualified for the appointment. The appointment of nurse members or practical nurse members may be made from the respective lists.]

[(5) At the time of appointment, each member of the board must be a citizen of the United States and a resident of Oregon. Each nurse member must be currently licensed and not under disciplinary status with the board in the category for which appointed with at least five years' experience therein, three of which were immediately prior to appointment. The public members and any person in the immediate family of the public members shall not be employed as a health professional or in any health-related industry.]

[(6) The Governor may remove a member of the board for cause.]

**SECTION 35.** ORS 678.150 is amended to read:

678.150. (1) The Oregon State Board of Nursing shall elect annually from its number a president, a president-elect and a secretary, each of whom shall serve until a successor is elected and qualified. The board shall meet on the call of the president or as the board may require. Special meetings of the board may be called by the secretary upon the request of any three members. Five members shall constitute a quorum.

(2) Members of the board are entitled to compensation and expenses as provided in ORS 292.495. Notwithstanding ORS 292.495 (1), a board member shall receive up to \$150 for each day or portion thereof during which the member is actually engaged in the performance of official duties.

(3) The board shall adopt a seal which shall be in the care of the executive director.

(4) The board shall keep a record of all its proceedings and of all persons licensed and schools or programs accredited or approved under ORS 678.010 to 678.445. The records shall at all reasonable times be open to public scrutiny.

(5) [Subject to the State Personnel Relations Law, the board shall hire, define the duties and fix the salary of an executive director who shall hire and define the duties of such other] **The executive director of the board may hire and define the duties of** employees as [are] necessary to carry into effect the provisions of ORS 678.010 to 678.445. The executive director, with approval of the board, may [also] employ special consultants. All salaries, compensation and expenses incurred or allowed shall be paid out of funds received by the board.

(6) The board shall determine the qualifications of applicants for a license to practice nursing in this state and establish educational and professional standards for such applicants subject to laws of this state.

(7) The board shall:

(a) Exercise general supervision over the practice of nursing in this state.

(b) Prescribe standards and approve curricula for nursing education programs preparing persons for licensing under ORS 678.010 to 678.445.

(c) Provide for surveys of nursing education programs at such times as may be necessary.

(d) Accredite such nursing education programs as meet the requirements of ORS 678.010 to 678.445 and of the board.

(e) Deny or withdraw accreditation from nursing education programs for failure to meet prescribed standards.

(f) Examine, license and renew the licenses of duly qualified applicants and administer examinations for other states where requested to do so by the other state.

(g) Issue subpoenas for any records relevant to a board investigation, including patient and other medical records, personnel records applicable to nurses and nursing assistants, records of schools of nursing and nursing assistant training records and any other relevant records; issue subpoenas to persons for personal interviews relating to board investigations; compel the attendance of witnesses; and administer oaths or affirmations to persons giving testimony during an investigation or at hearings. In any proceeding under this subsection, when a subpoena is issued to an applicant, certificate holder or licensee of the board, a claim of nurse-patient privilege under ORS 40.240 or of psychotherapist-patient privilege under ORS 40.230 is not grounds for quashing the subpoena or for refusing to produce the material that is subject to the subpoena.

(h) Enforce the provisions of ORS 678.010 to 678.445, and incur necessary expenses therefor.

(i) Prescribe standards for the delegation of special tasks of patient care to nursing assistants and for the supervision of nursing assistants. The standards must include rules governing the delegation of administration of noninjectable medication by nursing assistants and must include rules prescribing the types of noninjectable medication that can be administered by nursing assistants, and the circumstances, if any, and level of supervision under which nursing assistants can administer noninjectable medication. In formulating the rules governing the administration of noninjectable medication by nursing assistants, the board shall consult with nurses, physicians, gerontologists and pharmacologists. Notwithstanding any other provision of this paragraph, however, determination of the appropriateness of the delegation of a special task of patient care shall remain with the registered nurse issuing the order.

(j) Notify licensees at least annually of changes in legislative or board rules that affect the licensees. Notice may be by newsletter or other appropriate means.

(8) The board shall determine the scope of practice as delineated by the knowledge acquired through approved courses of education or through experience.

(9) For local correctional facilities, lockups and juvenile detention facilities, as defined in ORS 169.005, youth correction facilities as defined in ORS 420.005, for facilities operated by a public agency for detoxification of persons who use alcohol excessively, for homes or facilities licensed under ORS 443.705 to 443.825 for adult foster care, and for facilities licensed under ORS 443.400 to 443.455 for residential care, training or treatment, the board shall adopt rules pertaining to the provision of nursing care, and to the various tasks relating to the administration of noninjectable medication including administration of controlled substances. The rules must provide for delegation of nursing care and tasks relating to the administration of medication to other than licensed nursing personnel by a physician licensed by the Oregon Medical Board or by a registered nurse, designated by the facility. Such delegation must occur under the procedural guidance, initial direction and periodic inspection and evaluation of the physician or registered nurse. However, the provision of nursing care may be delegated only by a registered nurse.

(10) The [board] **Oregon State Board of Nursing** may require applicants, licensees and certificate holders under ORS 678.010 to 678.445 to provide to the board data concerning the individual's nursing employment and education.

(11) For the purpose of requesting a state or nationwide criminal records check under ORS 181.534, the board may require the fingerprints of a person who is:

- (a) Applying for a license or certificate that is issued by the board;
- (b) Applying for renewal of a license or certificate that is issued by the board; or
- (c) Under investigation by the board.

(12) Pursuant to ORS chapter 183, the board shall adopt rules necessary to carry out the provisions of ORS 678.010 to 678.445.

**SECTION 36.** ORS 678.442 is amended to read:

678.442. (1) The Oregon State Board of Nursing shall establish standards for certifying and shall certify as a nursing assistant any person who applies therefor, shows completion of an approved training program for nursing assistants and passes a board approved examination.

(2) In the manner prescribed in ORS chapter 183, the board may revoke or suspend a certificate issued under this section or may reprimand a nursing assistant for the following reasons:

(a) Conviction of the certificate holder of a crime where such crime bears demonstrable relationship to the duties of a nursing assistant. A copy of the record of such conviction, certified to by the clerk of the court entering the conviction, shall be conclusive evidence of the conviction.

(b) Any willful fraud or misrepresentation in applying for or procuring a certificate or renewal thereof.

(c) *[Use of any controlled substance or intoxicating liquor to an extent or in a manner dangerous or injurious to the certificate holder or others or to an extent that such use impairs the ability to conduct safely the duties of a nursing assistant.]* **Impairment as defined in section 1 of this 2009 Act.**

(d) Violation of any provisions of ORS 678.010 to 678.445 or rules adopted thereunder.



(e) Physical [*or mental*] condition that makes the certificate holder unable to perform safely the duties of a nursing assistant.

(f) Conduct unbecoming a nursing assistant in the performance of duties.

(3) The board shall establish by rule a procedure for the biennial renewal of nursing assistant certificates. The certificate renewal procedure shall be substantially like the procedure established for the licensing of nurses under ORS 678.101.

## **BOARD OF EXAMINERS OF NURSING HOME ADMINISTRATORS**

**SECTION 37.** ORS 678.780 is amended to read:

678.780. (1) The sanctions authorized by subsection (2) of this section may be imposed upon the following grounds:

(a) The employment of fraud or deception in applying for or obtaining a nursing home administrator's license.

(b) Engaging in conduct in the course of acting as a nursing home administrator involving fraud, dishonesty, malfeasance, cheating or other conduct as the Board of Examiners of Nursing Home Administrators of the State of Oregon may prohibit by rule.

(c) Conviction of a crime involving circumstances that relate to the licensee's fitness to continue practicing as a nursing home administrator.

(d) Mistake or inadvertence in the issuance of the license by the board.

(e) Physical [*or mental*] incapacity that presents an unreasonable risk of harm to the licensee or to the person or property of others in the course of performing the duties of a nursing home administrator.

(f) [*Use of any controlled substance or intoxicating liquor in a manner that impairs the licensee's ability to conduct safely the practice for which the licensee is licensed.*] **Impairment as defined in section 1 of this 2009 Act.**

(g) The licensee has engaged in conduct that would justify denying a license to an applicant.

(h) Violation of or noncompliance with any applicable provisions of ORS 678.710 to 678.780, 678.800 to 678.840 and 678.990 (2) or of any lawful rule or order of the board or continuous or substantial violations of the rules adopted under ORS 441.055.

(i) Discipline imposed by any other licensing body in this or any other state based on conduct that would be grounds for discipline under this section or rules adopted by the board.

(j) Incompetence in performing the duties of a nursing home administrator as demonstrated by evidence that the licensee either lacks or did not use the knowledge or skill necessary to perform the administrator's duties in a minimally adequate manner.

(k) Employing or otherwise assisting another person to act as a nursing home administrator with knowledge that the person does not hold a valid license to practice as a nursing home administrator.

(L) Failure to pay a civil penalty imposed against the licensee in a timely manner.

(m) Unprofessional conduct as defined in rules adopted by the board.

(2) Subject to ORS chapter 183, the board may impose any or all of the following sanctions:

(a) Suspend, revoke or refuse to renew any license required by ORS 678.720.

(b) A civil penalty not to exceed \$1,000.

(c) Probation, with authority to limit or restrict a license.

(d) Participation in a treatment program for intoxicating liquor or controlled substances.

(3) Hearings under this section must be conducted by an administrative law judge assigned from the Office of Administrative Hearings established by ORS 183.605.

(4) Information that the board obtains as part of an investigation into licensee or applicant conduct or as part of a contested case proceeding, consent order or stipulated agreement involving licensee or applicant conduct is confidential as provided under ORS 676.175.

**SECTION 38.** ORS 678.800 is amended to read:

678.800. (1) There is hereby created a Board of Examiners of Nursing Home Administrators [*in the Department of Human Services*]. **The board consists of nine members appointed by the Governor and subject to confirmation by the Senate in the manner provided in ORS 171.562 and 171.565. All members of the board must be concerned with the care and treatment of the chronically ill or infirm elderly patients and must be residents of this state. Of the members of the board:**

*[(2) The board shall be composed of nine individuals concerned with the care and treatment of the chronically ill or infirm elderly patients and shall be appointed by the Governor after consultation with the associations and societies appropriate to the professions and institutions:]*

(a) Three [*members shall*] **must** be nursing home administrators licensed under ORS 678.710 to 678.780, 678.800 to 678.840 and 678.990 (2);

(b) One **must be** a medical doctor licensed by the Oregon Medical Board actively engaged in private practice and conversant with the care and treatment of the long-term patient;

(c) One **must be a** licensed professional nurse actively engaged in caring for chronically ill and infirm patients and licensed by the Oregon State Board of Nursing;

*[(d) Three members representative of the public at large, at least one of whom shall be at least 62 years of age;]*

*[(e)]* (d) **One must be** a pharmacist licensed by the State Board of Pharmacy; and

(e) **Three must be members of the public who are not:**

(A) **Otherwise eligible for appointment to the board; or**

(B) **A spouse, domestic partner, child, parent or sibling of a nursing home administrator.**

**(2)(a) Board members required to be nursing home administrators may be selected by the Governor from a list of three to five nominees submitted by any professional organization representing nursing home administrators.**

*[(f)]* (b) **Except for those persons described in paragraph (a) of this subsection, no member of the board [shall] may** have a direct financial interest in a nursing home.

*[(3) All members of the board shall be citizens of the United States or shall have declared their intent to become citizens of the United States and shall be residents of this state.]*

(c) No more than two of the members of the board may be officials or full-time employees of state or local governments.

(d) **At least one public member must be at least 62 years of age.**

(e) **No public members of the board may hold any pecuniary interest in, or have any employment contract with, a long term care facility.**

(f) **In selecting the members of the board, the Governor shall strive to balance the representation on the board according to:**

(A) **Geographic areas of this state; and**

(B) **Ethnic group.**

*[(4)]* (3) The term of office of each member is three years but a member serves at the pleasure of the Governor. Before the expiration of the term of a member, the Governor shall appoint a successor whose term begins on July 1 next following. A member is eligible for reappointment but no member shall serve more than two consecutive terms. If there is a vacancy for any cause the Governor shall make an appointment to become immediately effective for the unexpired term.

*[(5) All appointments of members of the board by the Governor are subject to confirmation by the Senate in the manner provided in ORS 171.562 and 171.565.]*

*[(6)]* (4) The members of the board are entitled to compensation and expenses as provided in ORS 292.495.

*[(7) No public members of the board shall hold any pecuniary interest in, or have any employment contract with, a long term care facility.]*

## OREGON BOARD OF DENTISTRY

**SECTION 39.** ORS 679.140 is amended to read:

679.140. (1) The Oregon Board of Dentistry may discipline as provided in this section any person licensed to practice dentistry in this state for any of the following causes:

(a) Conviction of any violation of the law for which the court could impose a punishment if the board makes the finding required by ORS 670.280. The record of conviction or a certified copy thereof, certified by the clerk of the court or by the judge in whose court the conviction is entered, is conclusive evidence of the conviction.

(b) Renting or lending a license or diploma of the dentist to be used as the license or diploma of another person.

(c) Unprofessional conduct.

(d) Any violation of this chapter or ORS 680.010 to 680.205, of rules adopted pursuant to this chapter or ORS 680.010 to 680.205 or of an order issued by the board.

(e) Engaging in or permitting the performance of unacceptable patient care by the dentist or by any person working under the supervision of the dentist due to a deliberate or negligent act or failure to act by the dentist, regardless of whether actual injury to the patient is established.

(f) Incapacity to practice safely.

(2) "Unprofessional conduct" as used in this chapter includes but is not limited to the following:

(a) Obtaining any fee by fraud or misrepresentation.

(b) Willfully betraying confidences involved in the patient-dentist relationship.

(c) Employing, aiding, abetting or permitting any unlicensed personnel to practice dentistry or dental hygiene.

(d) Making use of any advertising statements of a character tending to deceive or mislead the public or that are untruthful.

(e) [*Addiction, dependency upon or self-abuse of alcohol or other drugs.*] **Impairment as defined in section 1 of this 2009 Act.**

(f) Obtaining or attempting to obtain a controlled substance in any manner proscribed by the rules of the board.

(g) Prescribing or dispensing drugs outside the scope of the practice of dentistry or in a manner that impairs the health and safety of an individual.

(h) Disciplinary action by a state licensing or regulatory agency of this or another state regarding a license to practice dentistry, dental hygiene or any other health care profession when, in the judgment of the board, the act or conduct resulting in the disciplinary action bears a demonstrable relationship to the ability of the licensee or applicant to practice dentistry or dental hygiene in accordance with the provisions of this chapter. A certified copy of the record of the disciplinary action is conclusive evidence of the disciplinary action.

(3) The proceedings under this section may be taken by the board from the matters within its knowledge or may be taken upon the information of another, but if the informant is a member of the board, the other members of the board shall constitute the board for the purpose of finding judgment of the accused.

(4) In determining what constitutes unacceptable patient care, the board may take into account all relevant factors and practices, including but not limited to the practices generally and currently followed and accepted by persons licensed to practice dentistry in this state, the current teachings at accredited dental schools, relevant technical reports published in recognized dental journals and the desirability of reasonable experimentation in the furtherance of the dental arts.

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

(a) Suspend judgment.

(b) Place a licensee on probation.

(c) Suspend a license to practice dentistry in this state.

(d) Revoke a license to practice dentistry in this state.

(e) Place limitations on a license to practice dentistry in this state.

(f) Refuse to renew a license to practice dentistry in this state.

(g) Accept the resignation of a licensee to practice dentistry in this state.

- (h) Assess a civil penalty.
  - (i) Reprimand a licensee.
  - (j) Impose any other disciplinary action the board in its discretion finds proper, including assessment of the costs of the disciplinary proceedings as a civil penalty.
- (6) If the board places any person upon probation as set forth in subsection (5)(b) of this section, the board may determine and may at any time modify the conditions of the probation and may include among them any reasonable condition for the purpose of protection of the public and for the purpose of the rehabilitation of the probationer or both. Upon expiration of the term of probation, further proceedings shall be abated by the board if the person holding the license furnishes the board with evidence that the person is competent to practice dentistry and has complied with the terms of probation. If the evidence fails to establish competence to the satisfaction of the board or if the evidence shows failure to comply with the terms of the probation, the board may revoke or suspend the license.
- (7) If a license to practice dentistry in this state is suspended, the person holding the license may not practice during the term of suspension. Upon the expiration of the term of suspension, the license shall be reinstated by the board if the board finds, based upon evidence furnished by the person, that the person is competent to practice dentistry and has not practiced dentistry in this state during the term of suspension. If the evidence fails to establish to the satisfaction of the board that the person is competent or if any evidence shows the person has practiced dentistry in this state during the term of suspension, the board may revoke the license after notice and hearing.
- (8) Upon receipt of a complaint under this chapter or ORS 680.010 to 680.205, the board shall conduct an investigation as described under ORS 676.165.
- (9) Information that the board obtains as part of an investigation into licensee or applicant conduct or as part of a contested case proceeding, consent order or stipulated agreement involving licensee or applicant conduct is confidential as provided under ORS 676.175. Notwithstanding ORS 676.165 to 676.180, the board may disclose confidential information regarding a licensee or an applicant to persons who may evaluate or treat the licensee or applicant for drug abuse, alcohol abuse or any other health related conditions.
- (10) The board may impose against any person who violates the provisions of this chapter or ORS 680.010 to 680.205 or rules of the board a civil penalty of up to \$5,000 for each violation. Any civil penalty imposed under this section shall be imposed in the manner provided in ORS 183.745.
- (11) Notwithstanding the expiration, suspension, revocation or surrender of the license, or the resignation or retirement of the licensee, the board may:
- (a) Proceed with any investigation of, or any action or disciplinary proceedings against, the dentist or dental hygienist; or
  - (b) Revise or render void an order suspending or revoking the license.
- (12)(a) The board may continue with any proceeding or investigation for a period not to exceed four years from the date of the expiration, suspension, revocation or surrender of the license, or the resignation or retirement of the licensee; or
- (b) If the board receives a complaint or initiates an investigation within that four-year period, the board's jurisdiction continues until the matter is concluded by a final order of the board following any appeal.
- (13) Withdrawing the application for license does not close any investigation, action or proceeding against an applicant.

**SECTION 40.** ORS 679.230 is amended to read:

679.230. (1) The Oregon Board of Dentistry [*shall consist*] **consists** of nine members[. *A member shall be*] appointed [*to the board*] by the Governor [*upon the expiration of the term of office of each of the preceding board members. Appointments to the board by the Governor are*] **and** subject to confirmation by the Senate in the manner provided in ORS 171.562 and 171.565. [*Each member shall hold the office for four years and until the member's successor is appointed and qualified.*] **All members of the board must be residents of this state. Of the members of the board:**

(a) Six must be Oregon active licensed dentists, of which at least one must be a dentist practicing in a dental specialty recognized by the American Dental Association;

(b) Two must be Oregon active licensed dental hygienists; and

(c) One must be a member of the public who is not:

(A) Otherwise eligible for appointment to the board; or

(B) A spouse, domestic partner, child, parent or sibling of a dentist or dental hygienist.

(2)(a) Board members required to be Oregon active licensed dentists or dental hygienists may be selected by the Governor from a list of three to five nominees for each vacancy, submitted by:

(A) The Oregon Dental Association, if the vacancy is in a dentist position;

(B) The Oregon Dental Hygienists' Association, if the vacancy is in a dental hygienist position; or

(C) Any of the professional organizations representing a dental specialty, if the vacancy is in a dental specialty position.

(b) In selecting the members of the board, the Governor shall strive to balance the representation on the board according to:

(A) Geographic areas of this state; and

(B) Ethnic group.

(3) The term of office of each member is four years, but a member serves at the pleasure of the Governor. Terms of office begin on the first Monday of April after the time of appointment. *[No person is eligible to membership on the board who is not a citizen of the United States or a resident of the State of Oregon. Six members shall be Oregon active licensed dentists, of which at least one shall be a dentist practicing in a dental specialty recognized by the American Dental Association, one member shall be a public member and two members shall be Oregon active licensed dental hygienists. Appointments of dentists made by the Governor to the Oregon Board of Dentistry may be selected by the Governor from a list of five names for each appointment suggested by the Oregon Dental Association. Appointments of dental hygienists made by the Governor to the Oregon Board of Dentistry may be selected by the Governor from a list of five names suggested by the Oregon Dental Hygienists' Association. Appointments of dental specialists by the Governor to the Oregon Board of Dentistry may be selected by the Governor from one name suggested by each of the organizations representing a dental specialty.]*

(4) Members of the board are entitled to compensation and expenses as provided in ORS 292.495.

**SECTION 41.** ORS 679.250 is amended to read:

679.250. The powers and duties of the Oregon Board of Dentistry are as follows:

(1) To, during the month of April of each year, organize and elect from its membership a president who shall hold office for one year, or until the election and qualification of a successor. *[The board shall appoint an administrative officer who shall discharge such duties as the board shall, from time to time, prescribe.]*

(2) To authorize all necessary disbursements to carry out the provisions of this chapter, including but not limited to, payment for necessary supplies, office equipment, books and expenses for the conduct of examinations, payment for legal and investigative services rendered to the board, and such other expenditures as are provided for in this chapter.

(3) To employ such inspectors, examiners, special agents, investigators, clerical assistants, assistants and accountants as are necessary for the investigation and prosecution of alleged violations and the enforcement of this chapter and for such other purposes as the board may require. Nothing in this chapter shall be construed to prevent assistance being rendered by an employee of the board in any hearing called by it. However, all obligations for salaries and expenses incurred under this chapter shall be paid from the fees accruing to the board under this chapter and not otherwise.

(4)(a) To conduct examinations of applicants for license to practice dentistry and dental hygiene at least twice in each year.

(b) In conducting examinations for licensure, the board may enter into a compact with other states for conducting regional examinations with other board of dental examiners concerned, or by a testing service recognized by such boards.

(5) To meet for the transaction of other business at the call of the president. A majority of board members shall constitute a quorum. A majority vote of those present shall be a decision of the entire board. The board's proceedings shall be open to public inspection in all matters affecting public interest.

(6) To keep an accurate record of all proceedings of the board and of all its meetings, of all receipts and disbursements, of all prosecutions for violation of this chapter, of all examinations for license to practice dentistry, with the names and qualifications for examination of any person examined, together with the addresses of those licensed and the results of such examinations, a record of the names of all persons licensed to practice dentistry in Oregon together with the addresses of all such persons having paid the license fee prescribed in ORS 679.120 and the names of all persons whose license to practice has been revoked or suspended.

(7) To make and enforce rules necessary for the procedure of the board, for the conduct of examinations, for regulating the practice of dentistry, and for regulating the services of dental hygienists and dental auxiliary personnel not inconsistent with the provisions of this chapter. As part of such rules, the board may require the procurement of a permit or other certificate. Any permit issued may be subject to periodic renewal. In adopting rules, the board shall take into account all relevant factors germane to an orderly and fair administration of this chapter and of ORS 680.010 to 680.205, the practices and materials generally and currently used and accepted by persons licensed to practice dentistry in this state, dental techniques commonly in use, relevant technical reports published in recognized dental journals, the curriculum at accredited dental schools, the desirability of reasonable experimentation in the furtherance of the dental arts, and the desirability of providing the highest standard of dental care to the public consistent with the lowest economic cost.

(8) Upon its own motion or upon any complaint, to initiate and conduct investigations of and hearings on all matters relating to the practice of dentistry, the discipline of licensees, or pertaining to the enforcement of any provision of this chapter. In the conduct of investigations or upon the hearing of any matter of which the board may have jurisdiction, the board may take evidence, administer oaths, take the depositions of witnesses, including the person charged, in the manner provided by law in civil cases, and compel their appearance before it in person the same as in civil cases, by subpoena issued over the signature of an employee of the board and in the name of the people of the State of Oregon, require answers to interrogatories, and compel the production of books, papers, accounts, documents and testimony pertaining to the matter under investigation or to the hearing. In all investigations and hearings, the board and any person affected thereby may have the benefit of counsel, and all hearings shall be held in compliance with ORS chapter 183. Notwithstanding ORS 676.165, 676.175 and 679.320, if a licensee who is the subject of an investigation or complaint is to appear before members of the board investigating the complaint, the board shall provide the licensee with a current summary of the complaint or the matter being investigated not less than five days prior to the date that the licensee is to appear. At the time the summary of the complaint or the matter being investigated is provided, the board shall provide to the licensee a current summary of documents or alleged facts that the board has acquired as a result of the investigation. The name of the complainant or other information that reasonably may be used to identify the complainant may be withheld from the licensee.

(9) To require evidence as determined by rule of continuing education or to require satisfactory evidence of operative competency before reissuing or renewing licenses for the practice of dentistry or dental hygiene.

(10) To adopt and enforce rules regulating administration of general anesthesia and conscious sedation by a dentist or under the supervision of a dentist in the office of the dentist. As part of such rules, the board may require the procurement of a permit which must be periodically renewed.

(11) To order an applicant or licensee to submit to a physical examination, mental examination or a competency examination when the board has evidence indicating the incapacity of the applicant or licensee to practice safely.

**SECTION 42.** ORS 679.290 is amended to read:

679.290. (1) If a person fails to comply with any subpoena issued under ORS 679.250 (8), a judge of the circuit court of any county, on application of the [*administrative officer*] **executive director** of the Oregon Board of Dentistry, shall compel obedience by proceedings for contempt as in the case of disobedience of the requirements of a subpoena issued from the circuit court.

(2) In any proceeding under subsection (1) of this section and where the subpoena is addressed to a licensee of the board it shall not be a defense that:

(a) No witness or mileage fee was paid; or

(b) The material that is subject to the subpoena is protected under a patient and dentist privilege.

### **STATE BOARD OF EXAMINERS FOR SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY**

**SECTION 43.** ORS 681.350 is amended to read:

681.350. (1) The State Board of Examiners for Speech-Language Pathology and Audiology may refuse to issue or renew any license or conditional license, may suspend or revoke any license or conditional license, may reprimand any licensee or conditional licensee or may place any licensee or conditional licensee on probation if the applicant, licensee or conditional licensee has:

(a) Obtained or attempted to obtain a license or conditional license by means of fraud, misrepresentation, or concealment of material facts.

(b) Violated any ethical standards of practice established under ORS 681.420.

(c) Violated any lawful order or rule of the board.

(d) Violated any provisions of this chapter.

(e) Been disciplined by a professional licensing board in another state or in this state.

**(f) An impairment as defined in section 1 of this 2009 Act.**

(2) An applicant, a licensee or a conditional licensee is entitled to an opportunity for a hearing that complies with all applicable requirements of ORS chapter 183 before the board takes final action under subsection (1) of this section.

(3) A person whose license has been revoked or whose application for a license has been denied may apply for reinstatement or licensure only under conditions, if any, set forth in the board's final order of revocation or denial of license.

(4) In disciplining a licensee or a conditional licensee, the board may impose any disciplinary action the board finds proper, including assessment of costs of the disciplinary proceedings as a civil penalty.

**SECTION 43a.** ORS 681.400 is amended to read:

681.400. (1) There is established a State Board of Examiners for Speech-Language Pathology and Audiology [*consisting*]. **The board consists** of seven members appointed by the Governor[.] **and subject to confirmation by the Senate in the manner provided in ORS 171.562 and 171.565. All members of the board must be residents of this state. Of the members of the board:**

**(a) Two must be audiologists licensed under this chapter.**

**(b) Two must be speech-language pathologists licensed under this chapter.**

**(c) One must be a person licensed to practice medicine who also holds board certification from the American Board of Otolaryngology.**

**(d) Two must be members of the public who are not:**

**(A) Otherwise eligible for appointment to the board; or**

**(B) A spouse, domestic partner, child, parent or sibling of an audiologist, speech-language pathologist or a person licensed to practice medicine who also holds board certification from the American Board of Otolaryngology.**

(2)(a) Board members required to be licensed audiologists or licensed speech-language pathologists may be selected by the Governor from a list of three to five nominees for each vacancy, submitted by:

(A) Any professional organization representing audiologists, if the vacancy on the board is for an audiologist position; or

(B) Any professional organization representing speech-language pathologists, if the vacancy on the board is for a speech-language pathologist position.

(b) In selecting the members of the board, the Governor shall strive to balance the representation on the board according to:

(A) Geographic areas of this state; and

(B) Ethnic group.

[(2)] (3) The term of office of each member is three years, but a member serves at the pleasure of the Governor. Before the expiration of the term of a member, the Governor shall appoint a successor whose term begins on July 1 next following. A member is eligible for reappointment. If there is a vacancy for any cause, the Governor shall make an appointment to become immediately effective for the unexpired term.

**SECTION 44.** ORS 681.410 is amended to read:

681.410. [(1) *Of the membership of the State Board of Examiners for Speech-Language Pathology and Audiology:*]

[(a) *All members must be residents of this state.*]

[(b) *Two members must be audiologists licensed under this chapter.*]

[(c) *Two members must be speech-language pathologists licensed under this chapter.*]

[(d) *One member must be a person licensed to practice medicine who also holds board certification from the American Board of Otolaryngology.*]

[(e) *Two members must be public members who do not possess the qualifications of any member described in paragraphs (b) to (d) of this subsection.*]

[(2)] A member of the [board] **State Board of Examiners for Speech-Language Pathology and Audiology** shall receive compensation and expenses as provided in ORS 292.495.

**SECTION 45.** ORS 681.450 is amended to read:

681.450. [(1) *Subject to applicable provisions of the State Personnel Relations Law, the State Board of Examiners for Speech-Language Pathology and Audiology may appoint an executive director and prescribe the duties and fix the compensation of the executive director.*]

[(2) *The executive director shall keep all records of the board and discharge any other duties that the board may prescribe.*]

[(3)] The executive director of the **State Board of Examiners for Speech-Language Pathology and Audiology** may, within guidelines established by the Oregon Department of Administrative Services, hire employees and enter into contracts for specific services necessary to carry out the administration of this chapter.

## OREGON BOARD OF OPTOMETRY

**SECTION 46.** ORS 683.140 is amended to read:

683.140. (1) The Oregon Board of Optometry may discipline as provided in this section any optometrist or person, where appropriate, for the following causes:

(a) Conviction of a felony or misdemeanor where such an offense bears a demonstrable relationship to the duties of an optometrist. The record of conviction, or a certified copy thereof certified by the clerk of the court or by the judge in whose court the conviction is had, shall be conclusive evidence of such conviction.

(b) Securing a license by practicing fraud or deceit upon the board.

(c) Unprofessional conduct, or for gross ignorance or inefficiency in the profession.

(d) Obtaining any fee by fraud or misrepresentation.



(e) Employing directly or indirectly any suspended or unlicensed optometrist to perform any work covered by ORS 683.010 to 683.335.

(f) Advertising optometric services or treatment or advice in which untruthful, improbable, misleading or deceitful statements are made.

(g) [*Habitual or excessive use of intoxicants, drugs or controlled substances.*] **Impairment as defined in section 1 of this 2009 Act.**

(h) Permitting another person to use the optometrist's license.

(i) Using advertisements that do not indicate that a licensed optometrist is practicing at the advertised location or locations or advertising optometric services without having a licensed optometrist at the location or locations.

(j) Advertising professional methods or professional superiority.

(k) Failing to comply with the requirements for continuing education.

(L) Violating the federal Controlled Substances Act.

(m) Prescribing controlled substances without a legitimate optometric purpose, or without following accepted procedures for examination of patients or for record keeping.

(n) Failing to report to the board any adverse action taken against the optometrist or person by another licensing jurisdiction, health regulatory board, peer review body, health care institution, professional optometric society or association, governmental agency, law enforcement agency or court for acts similar to conduct that would constitute grounds for disciplinary action as described in this section.

(o) Having been disciplined by any health regulatory board of another state based on acts similar to acts described in this section. A certified copy of the record of disciplinary action of the health regulatory board taking the disciplinary action is considered conclusive evidence of the action.

(p) Any violation of the provisions of ORS 683.010 to 683.335.

(2) When disciplining an optometrist or other person as authorized by subsection (1) of this section, the Oregon Board of Optometry may do any or all of the following:

(a) Deny an initial license;

(b) Revoke, suspend or refuse to renew a license;

(c) Place the optometrist on probation;

(d) Impose limitations on the optometrist; or

(e) Take other disciplinary action as the board in its discretion finds proper, including the assessment of the costs of the disciplinary proceedings as a civil penalty or assessment of a civil penalty not to exceed \$10,000 for each violation, or both.

**SECTION 47.** ORS 683.250 is amended to read:

683.250. (1) The Oregon Board of Optometry [*shall operate*] **operates** as a semi-independent state agency subject to ORS 182.456 to 182.472, for the purpose of carrying out this chapter. The board [*shall consist*] **consists** of five members appointed by the Governor[. *Each member of the board shall qualify by taking and subscribing the oath of office required by the Constitution, which shall be filed in the office of the Secretary of State.*] **and subject to confirmation by the Senate in the manner provided in ORS 171.562 and 171.565. All members of the board must be residents of this state. Of the members of the board:**

(a) Four [*of the members of this board shall*] **must** be doctors of optometry licensed and in practice in Oregon; and [*the fifth member shall be a public*]

(b) **One member must be a member of the public who** [*representing*] **represents** health consumers[. *Each of the members shall hold office for a term of three years or until a successor is appointed and qualified and shall be so classified*] **and who:**

(A) **Is not otherwise eligible for appointment to the board;**

(B) **Is not the spouse, domestic partner, child, parent or sibling of a doctor of optometry; and**

(C) **Does not have a direct or indirect relationship to health care professionals, to the health care industry or to the ophthalmic optical industry.**

(2)(a) Board members required to be a doctor of optometry may be selected by the Governor from a list of three to five nominees for each vacancy, submitted by a professional organization representing doctors of optometry.

(b) In selecting the members of the board, the Governor shall strive to balance the representation on the board according to:

- (A) Geographic areas of this state; and
- (B) Ethnic group.

(3) The term of office of each member is three years, but a member serves at the pleasure of the Governor. The terms must be staggered so that at least one optometrist member of the board retires each year.

(4) Each member of the board shall qualify by taking and subscribing the oath of office required by the Oregon Constitution, which shall be filed in the office of the Secretary of State.

(5) A majority of the members [*constitute*] **constitutes** a quorum for the transaction of business.

**SECTION 48.** ORS 683.260 is amended to read:

683.260. (1) [*No person is eligible to membership on the Oregon Board of Optometry who*] **A person may not be a member of the Oregon Board of Optometry if the person** is a stockholder in, or owner of, or a member of the faculty of or of the board of trustees of any school of optometry. [*The person appointed to represent health consumers and any person in the immediate family of the person shall not have any direct or indirect relationships to health care professionals, to the health care industry or to the ophthalmic optical industry.*]

(2) [*No*] **A** member of the board [*shall*] **may not** be financially interested in any purchase or contract in which the board is interested. [*No*] **A** member of the board [*shall*] **may not** be financially interested in the sale of any property or optical supplies to any prospective candidate for examination before the board.

#### STATE BOARD OF CHIROPRACTIC EXAMINERS

**SECTION 49.** ORS 684.010 is amended to read:

684.010. As used in this chapter:

(1) "Active senior" means a person who:

- (a) Is licensed under ORS 684.054;
- (b) Is at least 60 years of age; and
- (c) Has been in practice for 25 years or more.

(2) "Chiropractic" is defined as:

(a) That system of adjusting with the hands the articulations of the bony framework of the human body, and the employment and practice of physiotherapy, electrotherapy, hydrotherapy and minor surgery.

(b) The chiropractic diagnosis, treatment and prevention of body dysfunction; correction, maintenance of the structural and functional integrity of the neuro-musculoskeletal system and the effects thereof or interferences therewith by the utilization of all recognized and accepted chiropractic diagnostic procedures and the employment of all rational therapeutic measures as taught in approved chiropractic colleges.

(3) "Chiropractic physician" means a person licensed by ORS 677.060, 684.025, 684.100, 684.155 or 688.010 to 688.201 and this section as an attending physician.

(4) "Drugs" means all medicines and preparations and all substances, except over-the-counter nonprescription substances, food, water and nutritional supplements taken orally, used or intended to be used for the diagnosis, cure, treatment, mitigation or prevention of diseases or abnormalities of humans, which are recognized in the latest editions of the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia, official National Formulary, or any supplement to any of them, or otherwise established as drugs.

[(5) *“Impaired chiropractic physician” means a chiropractic physician unable to practice chiropractic with reasonable skill and safety by reason of habitual or excessive use or abuse of drugs, alcohol or other substances that impair ability.*]

[(6)] (5) *“Minor surgery” means the use of electrical or other methods for the surgical repair and care incident thereto of superficial lacerations and abrasions, benign superficial lesions, and the removal of foreign bodies located in the superficial structures; and the use of antiseptics and local anesthetics in connection therewith.*

**SECTION 50.** ORS 684.100 is amended to read:

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

(a) Fraud or misrepresentation.

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

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

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

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

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

**(e) Impairment as defined in section 1 of this 2009 Act.**

[(g)] (f) Unprofessional or dishonorable conduct, including but not limited to:

(A) Any conduct or practice contrary to recognized standard of ethics of the chiropractic profession or any conduct or practice that does or might constitute a danger to the health or safety of a patient or the public or any conduct, practice or condition that does or might [*impair*] **adversely affect** a physician’s ability safely and skillfully to practice chiropractic.

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

(C) Gross malpractice or repeated malpractice.

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

[(i)] (h) Representing to a patient that a manifestly incurable condition of sickness, disease or injury can be permanently cured.

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

[(k)] (j) The advertising of techniques or modalities to infer or imply superiority of treatment or diagnosis by the use thereof that cannot be conclusively proven to the satisfaction of the board.

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

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

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

[(o)] (n) The use of the name of the person under the designation, “Doctor,” “Dr.,” “D.C.,” “Chiropractor,” “Chiropractic D.C.,” “Chiropractic Physician,” or “Ph.C.,” or any similar designation with reference to the commercial exploitation of any goods, wares or merchandise.

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

[(q)] (p) Violation of any provision of this chapter or any rule adopted thereunder.

[(r)] (q) Gross incompetency or gross negligence.

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

[(t)] (s) Failing to give prior notice to patients of the permanent or temporary closure of the physician's practice or failing to give reasonable access to the records and files of the physician's patients at any time.

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

[(v)] (u) An act or conduct that results in a judgment of wrongdoing by a court of competent jurisdiction in any state or a finding of wrongdoing in an administrative proceeding in any state. The act or conduct must be rationally connected to the ability to practice chiropractic or chiropractic assisting.

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

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

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

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

(6) Notwithstanding any other provisions of ORS 684.010, 684.040, 684.050, 684.090, 684.100, 684.112, 684.130, 684.150 and 684.155, the board may at any time direct and order a professional competency examination limited to the area of practice out of which a specific complaint has arisen and make an investigation, including the taking of depositions or otherwise in order to fully inform itself with respect to the performance or conduct of a physician licensed under ORS 684.010, 684.040, 684.050, 684.090, 684.100, 684.112, 684.130, 684.150 and 684.155.

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

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

(A) Cause a competency examination of the physician for purposes of determining the physician's fitness to practice chiropractic with reasonable skill and safety to patients; or

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

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

(A) Cause a competency examination of the person for purposes of determining the person's fitness to provide the therapies with reasonable skill and safety to patients; or

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

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

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

(a) Suspend judgment.

(b) Place the person on probation.

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

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

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

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

(g) Take other disciplinary action as the board in its discretion finds proper, including assessment of the costs of the disciplinary proceedings.

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

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

**SECTION 51.** ORS 684.103 is amended to read:

684.103. (1) In addition to or instead of any disciplinary action under ORS 684.100, the State Board of Chiropractic Examiners may refer [*an impaired*] a chiropractic physician **who has an impairment as defined in section 1 of this 2009 Act** to a board-approved diversion program.

(2) The program administrator shall report to the board and provide all pertinent information concerning an impaired chiropractic physician who is referred to the program.

**SECTION 52.** ORS 684.130 is amended to read:

684.130. (1) There is established the State Board of Chiropractic Examiners. [*The board shall be composed of five chiropractors and two public members who are residents of this state.*] **The board consists of seven members appointed by the Governor and subject to confirmation by the Senate in the manner provided in ORS 171.562 and 171.565. All members of the board must be residents of this state. Of the members of the board:**

(a) **Five must be chiropractors; and**

(b) **Two must be members of the public who are not chiropractors or a spouse, domestic partner, child, parent or sibling of a chiropractor.**

(2)(a) **Board members required to be chiropractors may be selected by the Governor from a list of three to five nominees for each vacancy, submitted by any professional organization representing chiropractors.**

(b) The chiropractor members must have practiced chiropractic in this state for five years prior to appointment.

(c) **In selecting the members of the board, the Governor shall strive to balance the representation on the board according to:**

(A) **Geographic areas of this state; and**

(B) **Ethnic group.**

(3) Annually, upon the expiration of the term of any [*members*] **member** of the board, the Governor shall appoint one or more qualified persons to the board to serve for a period of three years. **A member serves at the pleasure of the Governor.**

[(2) *The Governor shall fill vacancies on the board, occasioned by death or otherwise. Upon sufficient proof to the Governor of the inability or misconduct of a member of the board, the member shall be dismissed and the Governor shall appoint as successor a person qualified to fill the vacancy.*]

[(3) *All appointments of members of the board by the Governor are subject to confirmation by the Senate in the manner provided in ORS 171.562 and 171.565.*]

**SECTION 53.** ORS 684.140 is amended to read:

684.140. The State Board of Chiropractic Examiners shall annually elect a president, a vice president and a secretary-treasurer from its membership. The **executive director of the board** shall keep a record of the proceedings of the board which shall be open to public inspection at all times during business hours.

**SECTION 54.** ORS 684.157 is amended to read:

684.157. The State Board of Chiropractic Examiners may enter into contracts to make services available to [*impaired*] chiropractic physicians **who have an impairment as defined in section 1 of this 2009 Act** and may, in accordance with ORS chapter 183, adopt rules for the administration of a diversion program for impaired chiropractic physicians.

**NOTE:** Section 55 was deleted by amendment. Subsequent sections were not renumbered.

## BOARD OF NATUROPATHIC EXAMINERS

**SECTION 56.** ORS 685.110 is amended to read:

685.110. The Board of Naturopathic Examiners may refuse to grant a license, may suspend or revoke a license, may limit a license, may impose probation, may issue a letter of reprimand and may impose a civil penalty not to exceed \$1,000 for each offense for any of the following reasons:

- (1) The use of fraud or deception in securing a license.
- (2) The impersonation of another physician.
- (3) Practicing naturopathic medicine under an assumed name.
- (4) The performance of an abortion.
- (5) The conviction of a crime involving moral turpitude.
- (6) Any other reason that renders the applicant or licensee unfit to perform the duties of a naturopathic physician.
- (7) Conviction of a crime relating to practice of naturopathic medicine.
- (8) Negligence related to the practice of naturopathic medicine.
- (9) [*Habitual or excessive use of intoxicants, drugs or controlled substances.*] **Impairment as defined in section 1 of this 2009 Act.**
- (10) Prescribing or dispensing drugs outside the scope of practice.
- [(11) *Commitment to a mental institution for the treatment of a mental disease that affects the ability of the applicant or licensee to safely practice naturopathic medicine.*]
- [(12)] (11) Obtaining a fee through fraud or misrepresentation.
- [(13)] (12) Gross or repeated malpractice.
- [(14)] (13) Representing to a patient that a manifestly incurable condition of sickness, disease or injury can be permanently cured.
- [(15)] (14) Any conduct or practice contrary to a recognized standard of ethics of the profession or any conduct or practice that does or might constitute a danger to the health or safety of a patient or the public or any conduct, practice or condition that does or might [*impair*] **adversely affect** a physician's ability safely and skillfully to practice naturopathic medicine.
- [(16)] (15) Willful and consistent utilization of any naturopathic service, X-ray equipment or treatment that is contrary to recognized standards of practice of the naturopathic profession.
- [(17)] (16) Failure to notify the board within 30 days of a change in the location of practice or of mailing address.
- [(18)] (17) Attempting to practice naturopathic medicine or practicing or claiming to practice naturopathic medicine or any of its components in this state without first complying with the provisions of this chapter.
- [(19)] (18) Suspension or revocation of a license to practice naturopathic medicine in another jurisdiction.
- [(20)] (19) Employing unlicensed persons to practice naturopathic medicine.
- [(21)] (20) Practicing natural childbirth without first obtaining a certificate of special competency.
- [(22)] (21) Representing that the licensee is a medical specialist or practices a medical specialty.

[(23)] **(22)** Failure to respond in a timely manner to a request for information regarding a complaint or the investigation of a complaint by the board.

[(24)] **(23)** Failure to pay a civil penalty in the time specified by the order imposing the penalty.

[(25)] **(24)** Violation of any provision of this chapter or rules adopted by the board.

**SECTION 57.** ORS 685.160 is amended to read:

685.160. (1) There hereby is created the Board of Naturopathic Examiners [*in the Department of Human Services*]. The board [*shall consist*] **consists** of seven members appointed by the Governor [*for terms of three years commencing*] **and subject to confirmation by the Senate in the manner provided in ORS 171.562 and 171.565. All members of the board must be residents of this state. Of the members of the board:**

**(a) Five must be naturopathic physicians who have each practiced continuously in this state for the five years immediately prior to the date of appointment.**

**(b) Two must be members of the general public who are not naturopathic physicians or a spouse, domestic partner, child, parent or sibling of a naturopathic physician.**

**(2)(a) Board members required to be naturopathic physicians may be selected by the Governor from a list of three to five nominees for each vacancy, submitted by a professional organization representing naturopathic physicians.**

**(b) In selecting the members of the board, the Governor shall strive to balance the representation on the board according to:**

**(A) Geographic areas of this state; and**

**(B) Ethnic group.**

**(3) The term of office of each member is three years, but a member serves at the pleasure of the Governor. A term of office commences July 1[, and]. Unless a member is removed prior to the end of the term, a member continues to serve on the board until [*their successors are*] a successor is appointed and qualified. A majority of the members of the board constitutes a quorum. If there is a vacancy for any cause, the Governor shall appoint a member to serve for the remainder of the unexpired term. [*All appointments of members of the board by the Governor are subject to confirmation by the Senate in the manner provided in ORS 171.562 and 171.565.*]**

*[(2) Of the membership of the Board of Naturopathic Examiners:]*

*[(a) All members must be citizens of this state.]*

*[(b) Five members shall be naturopaths who have each practiced continuously in this state for the five years immediately prior to the date of appointment.]*

*[(c) Two shall be members of the general public who do not possess the qualifications set forth in paragraph (b) of this subsection.]*

**[(3)] (4)** The board shall carry into effect the provisions of this chapter and is authorized to issue licenses to practice naturopathic medicine in this state. The possession of a common seal by the board hereby is authorized.

**SECTION 58.** ORS 685.170 is amended to read:

685.170. Annually, the Board of Naturopathic Examiners shall elect one of its members chair. The chair shall have power during the term of office to summon witnesses, administer oaths and take testimony and affidavits. The executive director of the board or a designee of the executive director shall keep a record of all actions of the board, including a detailed register of applicants for a license. [*The board shall employ or appoint a person to act as executive director of the board and perform such duties and functions as may be prescribed by the board.*]

## **OREGON STATE VETERINARY MEDICAL EXAMINING BOARD**

**SECTION 59.** ORS 686.120 is amended to read:

686.120. (1) With the consent of five members, the Oregon State Veterinary Medical Examining Board may discipline in accordance with ORS 686.150 any permit or license holder under this chapter for unprofessional or dishonorable conduct.

(2) The board may discipline in accordance with ORS 686.150 any permit or license holder who:  
(a) After undergoing a physical or mental health evaluation ordered by the board, has been determined to have a physical [or mental] condition that makes the permit or license holder unable to safely conduct the practice of veterinary medicine;

**(b) Has an impairment as defined in section 1 of this 2009 Act;**

[(b)] (c) Publicly professes to cure or treat diseases of a highly contagious, infectious and incurable nature;

[(c)] (d) In any way cares or treats injury and deformity in such a way as to deceive the public; or

[(d)] (e) Tests any horse, mule or ass for glanders, or cow or cattle for tuberculosis, and knowingly, wrongfully and maliciously states verbally or in writing that the animals are diseased or in a disease-free condition contrary to the indication of the test made.

**SECTION 60.** ORS 686.130 is amended to read:

686.130. "Unprofessional or dishonorable conduct," as used in this chapter, includes:

(1) The fraudulent use or misuse of any health certificate, shipping certificate, brand inspection certificate, or other blank forms used in practice, that might lead to the dissemination of disease or the transportation of diseased animals or the sale of inedible food products of animal origin for human consumption.

(2) Dilatory methods, willful neglect or misrepresentation in the inspection of meat.

(3) Misrepresentation of services rendered.

(4) Failure to report, or the negligent handling of the serious epidemic diseases of animals, such as anthrax, rabies, glanders, brucellosis, tuberculosis, foot and mouth disease, hog cholera, blackleg, and any other communicable disease known to medical science as being a menace to human and animal health.

(5) The dispensing or giving to anyone live culture or attenuated live virus vaccine to be administered by a layperson without providing instruction as to its administration and use and without prior written authorization from the State Veterinarian when such product is declared to be prohibited under ORS 596.075.

(6) Having professional connection with, or lending one's name to any illegal practitioner of veterinary medicine and the various branches thereof.

(7) [*Chronic alcohol abuse or habitual use of controlled substances.*] **Impairment as defined in section 1 of this 2009 Act.**

(8) Fraud or dishonesty in applying or reporting on any test for disease in animals.

(9) False or misleading advertising.

(10) Conviction of a crime involving moral turpitude or conviction of a felony. The record of the conviction is conclusive evidence.

(11) Conviction of a charge of cruelty to animals in Oregon or any other state, county, or municipal court. The record of conviction is conclusive evidence.

(12) The revocation, suspension or refusal to issue or renew a license or practice credential to practice veterinary medicine in any other state, territory or foreign jurisdiction if the cause of that revocation, suspension or refusal to issue or renew is cause in this state. The record of revocation, suspension or refusal to issue or renew is conclusive evidence.

(13) Failure to keep one's premises and equipment therein in a clean and sanitary condition.

(14) Gross ignorance, incompetence or inefficiency in the profession. In determining what constitutes "gross ignorance, incompetence or inefficiency in the profession," the Oregon State Veterinary Medical Examining Board may take into account all relevant factors, and practices, including but not limited to the practices generally and currently followed and accepted by the persons licensed to practice veterinary medicine in this state, the current teaching at accredited veterinary schools, relevant technical reports published in recognized veterinary medical journals and the desirability of reasonable experimentation in the furtherance of the veterinary medicine arts.



(15) Permitting the veterinary technician, preceptee, or student intern to perform a duty, task or procedure not specifically permitted by the board.

**SECTION 61.** ORS 686.210 is amended to read:

686.210. (1) There is created the Oregon State Veterinary Medical Examining Board, which shall carry out the purposes and enforce the provisions of this chapter. The board shall consist of eight members appointed by the Governor for a term of four years. *[Appointments made by the Governor to the board may be selected from a list of five names for each appointment suggested by the Oregon Veterinary Medical Association.]* Five members shall be licensed to practice veterinary medicine, surgery and dentistry in this state. Two members shall be public members. One member shall be a certified veterinary technician.

**(2) All members of the board must be residents of this state. A public member may not be a person licensed under this chapter or a person who has a spouse, domestic partner, child, parent or sibling who is licensed under this chapter.**

**(3) A statewide professional association for veterinarians may submit a list of suggested nominees for appointment to veterinarian and public member positions on the board. A statewide professional association for veterinary technicians may submit a list of suggested nominees for appointment to veterinary technician and public member positions on the board. In making appointments to the board, the Governor shall give consideration to the nominees suggested by an association. To the extent practicable, the Governor shall attempt to make board appointments that are broadly representative of the geographic and cultural diversity of the state.**

(4) Any appointments to fill vacancies by reason of death, resignation or removal shall be made by the Governor for the residue of the term of the retiring member. All appointments of members of the board by the Governor are subject to confirmation by the Senate in the manner provided in ORS 171.562 and 171.565.

~~[(2)]~~ **(5)** *[The board may appoint an executive director.]* Nothing in this chapter shall be construed to prevent assistance being rendered by the executive director of the board in any hearing called by it.

~~[(3)]~~ **(6)** Pursuant to ORS chapter 183 the board may adopt rules necessary for the administration of this chapter.

## STATE BOARD OF MASSAGE THERAPISTS

**SECTION 62.** ORS 687.051 is amended to read:

687.051. (1) To be eligible for issuance of an initial license in this state as a massage therapist *[after January 1, 1999]*, the applicant shall:

(a) Furnish the State Board of Massage Therapists with any personal references required by rule of the board.

(b) Have attained the age of 18 years.

(c) Furnish the board with educational certificates or transcripts required by law or rule of the board including but not limited to proof of certification in cardiopulmonary resuscitation and the subjects listed in paragraph (d) of this subsection.

(d) Have completed a minimum of 500 contact hours of certified classes in the following subjects: Anatomy and physiology, kinesiology, pathology, hydrotherapy, theory and hands-on practice of massage and bodywork techniques and professional practices, including client communication and boundaries, professional and business ethics and sanitation. The board by rule may set the minimum number of required hours for each subject.

(e) Pass an examination prepared and conducted by the board or its authorized representative establishing competency and ability to engage in the practice of massage. The examination shall be administered in the English language and may be in written, oral or practical form and may test the applicant for the required level of knowledge and skill in any subject related to massage and

bodywork. The board may accept passage of a board-approved national standardized examination as meeting the written examination requirement contained in this paragraph.

(f) Submit the application with payment for licensing within one year after notification of having passed the qualifying examination.

(2) An applicant must be a person of good moral character. For purposes of this section, the lack of good moral character may be established by reference to acts or conduct reflecting moral turpitude or to acts or conduct that would cause a reasonable person to have substantial doubts about the applicant's ability to practice massage in accordance with ORS 687.011 to 687.250, 687.895 and 687.991 and rules of the board.

(3) The board may require that an applicant furnish evidence satisfactory to the board that the applicant can safely and competently practice the profession of massage. The board may consider evidence including, but not limited to, indications of impairment [*by alcohol or controlled substances*] **as defined in section 1 of this 2009 Act** or of behavior, practices or conduct that would be considered unprofessional or dishonorable conduct if engaged in by a person licensed under ORS 687.011 to 687.250, 687.895 and 687.991.

(4) To be eligible for biennial renewal, a renewal applicant shall submit evidence to the board, as determined by the board by rule, that the applicant has completed a minimum of 12 hours of board-approved continuing education.

(5) To be eligible for inactive status, a licensed massage therapist must not be practicing massage in this state.

**SECTION 63.** ORS 687.081 is amended to read:

687.081. (1) The State Board of Massage Therapists may discipline a licensee, deny, suspend, revoke or refuse to renew a license, issue a reprimand, censure a licensee or place a licensee on probation if the licensee:

(a) Has violated any provision of ORS 687.011 to 687.250, 687.895 and 687.991 or any rule of the board adopted under ORS 687.121.

(b) Has made any false representation or statement to the board in order to induce or prevent action by the board.

(c) Has a physical [*or mental*] condition that makes the licensee unable to conduct safely the practice of massage.

(d) [*Is habitually intemperate in the use of alcoholic beverages or is addicted to the use of habit-forming drugs or controlled substances*] **Has an impairment as defined in section 1 of this 2009 Act.**

(e) Has misrepresented to any patron any services rendered.

(f) Has been convicted of a crime that bears a demonstrable relationship to the practice of massage.

(g) Fails to meet with any requirement under ORS 687.051.

(h) Violates any provision of ORS 167.002 to 167.027.

(i) Engages in unprofessional or dishonorable conduct.

(j) Has been the subject of disciplinary action as a massage therapist by any other state or territory of the United States or by a foreign country and the board determines that the cause of the disciplinary action would be a violation under ORS 687.011 to 687.250, 687.895 and 687.991 or rules of the board if it occurred in this state.

(2) If the board places a licensee on probation pursuant to subsection (1) of this section, the board may impose and at any time modify the following conditions of probation:

(a) Limitation on the allowed scope of practice.

(b) If the board finds that the licensee [*is physically or mentally impaired*] **has a physical incapacity to practice with reasonable competence and safety**, a requirement for successful completion of appropriate treatment as determined by the board.

(c) Individual or peer supervision.

(d) Such other conditions as the board may deem necessary for the protection of the public and the rehabilitation of the licensee.

(3) If the board determines that a licensee's continued practice constitutes a serious danger to the public, the board may impose an emergency suspension of the license without a hearing. Simultaneous with the order of suspension, the board shall institute proceedings for a hearing as provided under ORS 687.011 to 687.250, 687.895 and 687.991. The suspension shall continue unless and until the licensee obtains injunctive relief from a court of competent jurisdiction or the board determines that the suspension is no longer necessary for the protection of the public.

(4) In addition to the discipline described in subsection (1) of this section, the board may impose a civil penalty as provided under ORS 687.250. Civil penalties under this subsection shall be imposed pursuant to ORS 183.745.

(5) Prior to imposing any of the sanctions authorized under this section, the board shall consider, but is not limited to, the following factors:

(a) The person's past history in observing the provisions of ORS 687.011 to 687.250, 687.895 and 687.991 and the rules adopted pursuant thereto;

(b) The effect of the violation on public safety and welfare;

(c) The degree to which the action subject to sanction violates professional ethics and standards of practice;

(d) The economic and financial condition of the person subject to sanction; and

(e) Any mitigating factors that the board may choose to consider.

(6) In addition to the sanctions authorized by this section, the board may assess against a licensee the costs associated with the disciplinary action taken against the licensee.

(7) The board shall adopt a code of ethical standards for practitioners of massage and shall take appropriate measures to ensure that all applicants and practitioners of massage are aware of those standards.

(8) Upon receipt of a complaint under ORS 687.011 to 687.250, 687.895 and 687.991, the board shall conduct an investigation as described under ORS 676.165.

(9) Information that the board obtains as part of an investigation into licensee or applicant conduct or as part of a contested case proceeding, consent order or stipulated agreement involving licensee or applicant conduct is confidential as provided under ORS 676.175.

**SECTION 64.** ORS 687.115 is amended to read:

687.115. (1) The State Board of Massage Therapists [*shall operate*] **operates** as a semi-independent state agency subject to ORS 182.456 to 182.472, for purposes of carrying out the provisions of ORS 687.011 to 687.250, 687.895 and 687.991. The board [*shall be composed of*] **consists of seven members[,] appointed by the Governor and subject to confirmation by the Senate in the manner provided in ORS 171.562 and 171.565. All members of the board must be residents of this state. Of the members of the board:**

(a) Four [*of whom shall*] **must** be licensed massage therapists [*and*].

(b) Three [*of whom shall*] **must** be members of the public, including one public member selected from a health related field[, *who shall be appointed by the Governor for terms of four years. Members serve at the option of the Governor*]. **Public members may not be:**

(A) **Massage therapists; or**

(B) **A spouse, domestic partner, child, parent or sibling of a massage therapist.**

(2)(a) **Board members required to be licensed massage therapists may be selected by the Governor from a list of three to five nominees for each vacancy, submitted by a professional organization representing massage therapists.**

(b) **In selecting the members of the board, the Governor shall strive to balance the representation on the board according to:**

(A) **Geographic areas of this state; and**

(B) **Ethnic group.**

(3) **The term of office of each member is four years, but a member serves at the pleasure of the Governor.**

[(2)] (4) Members are entitled to compensation and expenses as determined by the board.

[(3)] (5) The board may:

- (a) Hold meetings at times and locations determined by the board.
- (b) Hire, define the duties and fix the salary of an administrator who may hire and define the duties and provide supervision and evaluation of other employees as necessary to carry out the provisions of ORS 687.011 to 687.250, 687.895 and 687.991. The administrator, with approval of the board, may also employ special consultants. All salaries, compensation and expenses incurred or allowed shall be paid out of funds received by the board.

**NOTE:** Section 65 was deleted by amendment. Subsequent sections were not renumbered.

## PHYSICAL THERAPIST LICENSING BOARD

**SECTION 66.** ORS 688.140 is amended to read:

688.140. (1) The Physical Therapist Licensing Board, after notice and hearing as provided in ORS 688.145, may impose any or all of the following sanctions or take any of the following actions upon any of the grounds specified in subsection (2) of this section:

- (a) Refuse to license any applicant.
- (b) Refuse to renew the license of any physical therapist or physical therapist assistant.
- (c) Suspend or revoke the license of any physical therapist or physical therapist assistant.
- (d) Suspend or revoke a temporary permit issued under ORS 688.110.
- (e) Impose a civil penalty not to exceed \$5,000.
- (f) Impose probation with authority to limit or restrict a license.
- (g) Impose conditions, restrictions or limitations on practice.
- (h) Issue letters of reprimand.
- (i) Impose any other appropriate sanction, including assessment of the reasonable costs of a proceeding under ORS 688.145 as a civil penalty. Costs include, but are not limited to, the costs of investigation, attorney fees, hearing officer costs and the costs of discovery.

(2) Grounds exist for the imposition of sanctions as specified in subsection (1) of this section when a person:

- (a) Violates any provision of ORS 688.010 to 688.201, board rules or a written order from the board.
- (b) Practices or offers to practice beyond the scope of practice of physical therapy.
- (c) Obtains or attempts to obtain or renew a license or temporary permit by fraud or misrepresentation.
- (d) Provides substandard care as a physical therapist through a deliberate or negligent act or failure to act, regardless of whether injury to the patient occurs.
- (e) Provides substandard care as a physical therapist assistant by exceeding the authority to perform components of physical therapy interventions selected by the supervising physical therapist or through a deliberate or negligent act or failure to act, regardless of whether injury to the patient occurs.
- (f) Fails as a physical therapist to supervise physical therapist assistants in accordance with board rules.
- (g) Fails as a physical therapist or physical therapist assistant to supervise physical therapist aides in accordance with board rules.
- (h) Subject to the provisions of ORS 670.280, has been convicted of a crime in Oregon or any other state, territory or country. For purposes of this paragraph, conviction includes a verdict of guilty, a plea of guilty or a plea of no contest.
- (i) *[Uses controlled substances or intoxicating liquors to an extent or in a manner that is illegal, dangerous or injurious to the licensee or others or that impairs the person's ability to safely practice physical therapy.]* **Has an impairment as defined in section 1 of this 2009 Act.**
- (j) Has had an application for licensure refused because of conduct or circumstances that would be grounds for sanctions by the board, or a license revoked or suspended, or other disciplinary action taken by the proper authorities of another state, territory or country.

(k) Engages in sexual misconduct. For purposes of this paragraph, sexual misconduct includes but is not limited to:

(A) Engaging in sexual conduct or soliciting a sexual relationship with a current patient, whether consensual or nonconsensual.

(B) Intentionally exposing or viewing a completely or partially disrobed patient in the course of treatment if the exposure or viewing is not related to patient diagnosis or treatment under current practice standards.

(L) Directly or indirectly requests, receives, pays or participates in dividing, transferring or assigning an unearned fee or profits by a means of a credit or other valuable consideration such as an unearned commission, discount or gratuity in connection with the furnishing of physical therapy services. This paragraph does not prohibit the members of any regularly and properly organized business entity recognized by law and comprised of physical therapists from dividing fees received for professional services among themselves as they determine.

(m) Fails to adhere to the standards of ethics of the physical therapy profession established by board rule.

(n) Obtains or attempts to obtain a fee for physical therapy services by fraud or misrepresentation.

(o) Makes misleading, deceptive or fraudulent representations in the course of providing physical therapy services.

(p) Fails to report to the board, when the person has direct knowledge of an unprofessional, incompetent or illegal act that reasonably appears to be in violation of ORS 688.010 to 688.201 or any rules of the board.

(q) Interferes with an investigation or disciplinary proceeding of the board.

(r) Aids or abets a person who is not licensed in this state to practice physical therapy.

(s) Fails to maintain adequate patient records.

(t) Fails to maintain patient confidentiality.

(u) Provides treatment intervention that is not warranted by the patient's condition or continues treatment beyond the point of reasonable benefit to the patient.

(v) Provides physical therapy services or participates in physical therapy services solely for reasons of personal or institutional financial gain.

(w) Aids or causes another person, directly or indirectly, to violate ORS 688.010 to 688.201 or rules of the board, fraudulently uses or permits the use of a license number in any way, or acts with the intent to violate ORS 688.010 to 688.201 or rules of the board.

(3) To enforce the provisions of this section, the board is authorized to initiate an investigation and take the following actions:

(a) Receive complaints filed against persons and conduct timely investigations.

(b) Initiate its own investigation if the board has reason to believe that there may have been a violation of ORS 688.010 to 688.201.

(c) Issue a subpoena to compel the attendance of any witness or the production of any documentation relating to a matter under investigation. In addition to the board, the executive director or the executive director's designee may issue a subpoena. When the board, in the course of an investigation, requires the production of patient records for inspection and copying by subpoena, or otherwise, the records shall be produced without regard to whether patient consent has been obtained and without regard to any claim of confidentiality or privilege.

(d) Take the deposition of a witness, including a physical therapist or physical therapist assistant being investigated, in the manner provided by law in civil cases.

(e) Take emergency action to suspend a person's license or restrict the person's practice or employment pending proceedings by the board.

(f) Report to the appropriate district attorney all cases that, in the judgment of the board, warrant prosecution.

(g) Require a person to undergo a mental, physical, chemical dependency or competency evaluation at the person's expense when the board has objectively reasonable grounds to believe that the

person is or may be unable to practice physical therapy with reasonable skill and safety, with the results being reported to the board. The report shall not be disclosed to the public but may be received into evidence in a proceeding between the board and the person when the mental, physical, chemical dependency or competency of the person is at issue, notwithstanding any claim of privilege by the person.

(4) If the board finds that the information received in a complaint or an investigation does not merit disciplinary action against a person, nondisciplinary actions may ensue. The board may then take the following actions:

(a) Dismiss the complaint.

(b) Issue a confidential advisory letter to the person that is nondisciplinary and that notifies the physical therapist or physical therapist assistant that certain conduct or practices must be modified or eliminated.

(5) The board may apply for injunctive relief in any court of competent jurisdiction to enjoin any person from committing any act in violation of ORS 688.010 to 688.201. Injunction proceedings are in addition to, and not in lieu of, penalties or other sanctions prescribed in ORS 688.010 to 688.201.

**SECTION 67.** ORS 688.160 is amended to read:

688.160. (1) The Physical Therapist Licensing Board *[shall operate]* **operates** as a semi-independent state agency subject to ORS 182.456 to 182.472, for purposes of carrying out the provisions of ORS 688.010 to 688.201 and 688.990 (1). The Physical Therapist Licensing Board *[shall consist]* **consists** of seven members appointed by the Governor *[who may be appointed from a list of not fewer than nine names, submitted by the Oregon Physical Therapy Association.]* **and subject to confirmation by the Senate in the manner provided in ORS 171.562 and 171.565. All members of the board must be residents of this state. Of the members of the board:**

(a) Five *[members shall]* **must** be physical therapists who are Oregon residents, possess unrestricted licenses to practice physical therapy in this state, have been practicing in this state for at least two years immediately preceding their appointments and have been practicing in the field of physical therapy for at least five years.

(b) One *[member shall]* **must** be a licensed physical therapist assistant.

(c) One *[member shall]* **must** be a public member who has an interest in consumer rights[.] **and who is not:**

(A) **Otherwise eligible for appointment to the board; or**

(B) **The spouse, domestic partner, child, parent or sibling of a physical therapist or physical therapist assistant.** *[All members shall have equal voting privileges.]*

(2)(a) **Board members required to be physical therapists or physical therapist assistants may be selected by the Governor from a list of three to five nominees for each vacancy, submitted by the Oregon Physical Therapy Association.**

(b) **In selecting the members of the board, the Governor shall strive to balance the representation on the board according to:**

(A) **Geographic areas of this state; and**

(B) **Ethnic group.**

(3)(a) *[Upon the expiration of the term of a member of the board, the Governor shall appoint a successor who may be appointed from a list of three names submitted to the Governor by the Oregon Physical Therapy Association to serve a term of four years. A member may not serve for more than two consecutive four-year terms.]* **The term of office of each member is four years, but a member serves at the pleasure of the Governor.**

[(3)] (b) In the event of a vacancy in the office of a member of the board other than by reason of the expiration of a term, the Governor, not later than 90 days after the occurrence of the vacancy, shall appoint a person to fill the vacancy for the unexpired term. *[The person may be appointed from a list of three names submitted as provided in subsection (2) of this section. If requested by the board, the Governor may remove any member of the board for misconduct, incompetence or neglect of duty.]*

(4) Each member of the board is entitled to compensation and expenses as provided in ORS 292.495.

(5) A board member who acts within the scope of board duties, without malice and in reasonable belief that the member's action is warranted by law, is immune from civil liability.

(6) The board shall have power to:

(a) Establish matters of policy affecting administration of ORS 688.010 to 688.201;

(b) Provide for examinations for physical therapists and physical therapist assistants and adopt passing scores for the examinations;

(c) Adopt rules necessary to carry out and enforce the provisions of ORS 688.010 to 688.201;

(d) Establish standards and tests to determine the qualifications of applicants for licenses to practice physical therapy in this state;

(e) Issue licenses to persons who meet the requirements of ORS 688.010 to 688.201;

(f) Adopt rules relating to the supervision and the duties of physical therapist aides who assist in performing routine work under supervision;

(g) Adopt rules establishing minimum continuing education requirements for all licensees;

(h) Exercise general supervision over the practice of physical therapy within this state;

(i) Establish and collect fees for the application or examination for, or the renewal, reinstatement or duplication of, a license under ORS 688.040, 688.080 or 688.100 or for the issuance of a temporary permit under ORS 688.110; and

(j) Establish and collect fees to carry out and enforce the provisions of ORS 688.010 to 688.201.

(7) The board shall meet as determined by the board and at any other time at the call of the board chairperson, who shall be elected by the members of the board.

(8) The board may appoint and fix the compensation of [*an executive director and other*] staff as necessary to carry out the operations of the board.

(9) The board shall:

(a) Maintain a current list of all persons regulated under ORS 688.010 to 688.201, including the persons' names, current business and residential addresses, telephone numbers, electronic mail addresses and license numbers.

(b) Provide information to the public regarding the procedure for filing a complaint against a physical therapist or physical therapist assistant.

(c) Publish at least annually, and in a format or place determined by the board, final disciplinary actions taken against physical therapists and physical therapist assistants and other information, including rules, in order to guide physical therapists and physical therapist assistants regulated pursuant to ORS 688.010 to 688.201.

## BOARD OF RADIOLOGIC TECHNOLOGY

**SECTION 68.** ORS 688.525 is amended to read:

688.525. (1) The Board of Radiologic Technology, after notice of and hearing as required under the contested case procedures of ORS chapter 183, may refuse to license any applicant, may refuse to renew the license or permit of any radiologic technologist or may suspend or revoke the license or permit of a person who:

(a) [*Is chemically dependent.*] **Has an impairment as defined in section 1 of this 2009 Act.**

(b) In the judgment of the board is guilty of unethical or unprofessional conduct in the practice of radiologic technology.

(c) Has been convicted of any crime where the crime bears a demonstrable relationship to the practice of radiologic technology.

(d) In the judgment of the board, is guilty of gross negligence in the practice of radiologic technology.

[*e Has been adjudged incompetent by a court of law and thereafter has not been lawfully declared competent.*]

[(f)] (e) Has undertaken to act as a radiologic technologist independently of the supervision of a practitioner licensed by the State of Oregon to practice one of the healing arts.

[(g)] (f) Has obtained or attempted to obtain a license or permit under ORS 688.405 to 688.605 by fraud or material misrepresentation.

(2) Upon receipt of a complaint under ORS 688.405 to 688.605, the board shall conduct an investigation as described under ORS 676.165.

(3) Information that the board obtains as part of an investigation into licensee or applicant conduct or as part of a contested case proceeding, consent order or stipulated agreement involving licensee or applicant conduct is confidential as provided under ORS 676.175.

**SECTION 69.** ORS 688.545 is amended to read:

688.545. (1)[(a)] There is created [*in the Department of Human Services*] a Board of Radiologic Technology [*consisting of nine members who shall be appointed by the Governor*]. **The board consists of nine members appointed by the Governor and subject to confirmation by the Senate in the manner provided in ORS 171.562 and 171.565.** Each member of the board [*shall be a citizen of the United States and*] **must be** a resident of [*the*] **this** state [*of Oregon. Each appointed member is entitled to vote*].

[(b)] Of the members of the board:

[(A)] (a) One [*shall*] **must** be a radiologist;

[(B)] *At least one shall be a lay person;*

[(C)] (b) At least one [*shall*] **must** be a limited permit holder; [*and*]

[(D)] (c) At least five [*shall*] **must** be licensed practicing radiologic technologists, one of whom [*shall*] **must** be a radiation therapist[.]; **and**

**(d) At least one must be a member of the public. A public member appointed under this paragraph may not be:**

**(A) Otherwise eligible for appointment to the board; or**

**(B) The spouse, domestic partner, child, parent or sibling of a radiologist, limited permit holder or radiologic technologist.**

**(2)(a) Board members required to be limited permit holders or licensed practicing radiologic technologists may be selected by the Governor from a list of three to five nominees for each vacancy, submitted by:**

**(A) A professional organization representing limited permit holders, if the vacancy is in a limited permit holder position;**

**(B) A professional organization representing radiation therapists, if the vacancy is in the radiation therapist position; or**

**(C) A professional organization representing radiologic technologists, if the vacancy is in a radiologic technologist or radiation therapist position.**

**(b) In selecting the members of the board, the Governor shall strive to balance the representation on the board according to:**

**(A) Geographic areas of this state; and**

**(B) Ethnic group.**

[(2)] (3) The section manager of the Radiation Protection Services Section of the Department of Human Services, or a person appointed by the section manager, shall be an advisory member of the board for the purpose of providing counsel and [*shall not be*] **is not** entitled to vote.

[(3)] (4) The term of office of the members of the board [*shall be*] **is** three years [*and*], **but a member serves at the pleasure of the Governor.** A member may be reappointed to serve not more than two full terms.

[(4)] (5) Members of the board [*shall be*] **are** entitled to compensation and expenses as provided in ORS 292.495.

[(5)] (6) The board shall annually elect a board chairperson and a vice chairperson from the members of the board.

[(6)] (7) For the purpose of transacting its business, the board shall meet at least once every three months at times and places designated by resolution. Special meetings may also be held at



such times as the board may elect or at the call of the chairperson. Notification of the time, place and purpose of any special meeting shall be sent to all members of the board at least 15 days before the date of the meeting. All meetings are subject to ORS 192.610 to 192.690.

[~~(7)~~] (8) Five members of the board [~~shall~~] constitute a quorum for the transaction of business at any meeting. Five affirmative votes [~~shall be~~] **are** required to take action.

**NOTE:** Section 70 was deleted by amendment. Subsequent sections were not renumbered.

## STATE BOARD OF PHARMACY

**SECTION 71.** ORS 689.005 is amended to read:

689.005. As used in this chapter:

(1) "Administer" means the direct application of a drug or device whether by injection, inhalation, ingestion, or any other means, to the body of a patient or research subject by:

(a) A practitioner or the authorized agent thereof; or

(b) The patient or research subject at the direction of the practitioner.

(2) "Approved continuing pharmacy education program" means those seminars, classes, meetings, workshops and other educational programs on the subject of pharmacy approved by the board.

(3) "Board of pharmacy" or "board" means the State Board of Pharmacy.

(4) "Continuing pharmacy education" means professional, pharmaceutical post-graduate education in the general areas of socio-economic and legal aspects of health care; the properties and actions of drugs and dosage forms; and the etiology, characteristics and therapeutics of the disease state.

(5) "Continuing pharmacy education unit" means the unit of measurement of credits for approved continuing education courses and programs.

(6) "Deliver" or "delivery" means the actual, constructive or attempted transfer of a drug or device other than by administration from one person to another, whether or not for a consideration.

(7) "Device" means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent or other similar or related article, including any component part or accessory, which is required under federal or state law to be prescribed by a practitioner and dispensed by a pharmacist.

(8) "Dispense" or "dispensing" means the preparation and delivery of a prescription drug pursuant to a lawful order of a practitioner in a suitable container appropriately labeled for subsequent administration to or use by a patient or other individual entitled to receive the prescription drug.

(9) "Distribute" means the delivery of a drug other than by administering or dispensing.

(10) "Drug" means:

(a) Articles recognized as drugs in the official United States Pharmacopoeia, official National Formulary, official Homeopathic Pharmacopoeia, other drug compendium or any supplement to any of them;

(b) Articles intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in a human or other animal;

(c) Articles (other than food) intended to affect the structure or any function of the body of humans or other animals; and

(d) Articles intended for use as a component of any articles specified in paragraph (a), (b) or (c) of this subsection.

(11) "Drug order" means a written order, in a hospital or other inpatient care facility, for an ultimate user of any drug or device issued and signed by a practitioner, or an order transmitted by other means of communication from a practitioner, that is immediately reduced to writing by a pharmacist, licensed nurse or other practitioner.

(12) "Drug outlet" means any pharmacy, nursing home, shelter home, convalescent home, extended care facility, drug abuse treatment center, penal institution, hospital, family planning clinic, student health center, retail store, wholesaler, manufacturer, mail-order vendor or other establish-

ment with facilities located within or out of this state that is engaged in dispensing, delivery or distribution of drugs within this state.

(13) "Drug room" means a secure and lockable location within an inpatient care facility that does not have a licensed pharmacy.

(14) "Electronically transmitted" or "electronic transmission" means a communication sent or received through technological apparatuses, including computer terminals or other equipment or mechanisms linked by telephone or microwave relays, or any similar apparatus having electrical, digital, magnetic, wireless, optical, electromagnetic or similar capabilities.

(15) "Institutional drug outlet" means hospitals and inpatient care facilities where medications are dispensed to another health care professional for administration to patients served by the hospitals or facilities.

(16) "Intern" means any person who has completed the junior or third academic year of a course of study at an approved college of pharmacy and is licensed with the board as an intern.

(17) "Internship" means a professional [*and practical experience*] **experiential** program approved by the board under the supervision of a licensed pharmacist registered with the board as a preceptor.

(18) "Itinerant vendor" means all persons who sell or otherwise distribute nonprescription drugs by passing from house to house, or by haranguing the people on the public streets or in public places, or who use the customary devices for attracting crowds and therewith recommending their wares and offering them for sale.

(19) "Labeling" means the process of preparing and affixing of a label to any drug container exclusive, however, of the labeling by a manufacturer, packer or distributor of a nonprescription drug or commercially packaged legend drug or device. Any such label shall include all information required by federal and state law or regulation.

(20) "Manufacture" means the production, preparation, propagation, compounding, conversion or processing of a device or a drug, either directly or indirectly by extraction from substances of natural origin or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis and includes any packaging or repackaging of the substances or labeling or relabeling of its container, except that this term does not include the preparation or compounding of a drug by an individual for their own use or the preparation, compounding, packaging or labeling of a drug:

(a) By a practitioner as an incident to administering or dispensing of a drug in the course of professional practice; or

(b) By a practitioner or by the practitioner's authorization under supervision of the practitioner for the purpose of or as an incident to research, teaching or chemical analysis and not for sale.

(21) "Manufacturer" means a person engaged in the manufacture of drugs.

(22) "Nonprescription drug outlet" means shopkeepers and itinerant vendors registered under ORS 689.305.

(23) "Nonprescription drugs" means drugs which may be sold without a prescription and which are prepackaged for use by the consumer and labeled in accordance with the requirements of the statutes and regulations of this state and the federal government.

(24) "Person" means an individual, corporation, partnership, association or any other legal entity.

(25) "Pharmacist" means an individual licensed by this state to engage in the practice of pharmacy.

(26) "Pharmacy" means a place that meets the requirements of rules of the board, is licensed and approved by the board where the practice of pharmacy may lawfully occur and includes apothecaries, drug stores, dispensaries, hospital outpatient pharmacies, pharmacy departments and prescription laboratories but does not include a place used by a manufacturer or wholesaler.

(27) "Pharmacy technician" means a person licensed by the State Board of Pharmacy who assists the pharmacist in the practice of pharmacy pursuant to rules of the board.

(28) "Practitioner" means a person licensed and operating within the scope of such license to prescribe, dispense, conduct research with respect to or administer drugs in the course of professional practice or research:

(a) In this state; or

(b) In another state or territory of the United States not residing in Oregon and registered under the federal Controlled Substances Act.

(29) "Preceptor" means a pharmacist licensed and in good standing, registered by the board to supervise the internship training of a licensed intern.

(30) "Prescription drug" or "legend drug" means a drug which is:

(a) Required by federal law, prior to being dispensed or delivered, to be labeled with either of the following statements:

(A) "Caution: Federal law prohibits dispensing without prescription"; or

(B) "Caution: Federal law restricts this drug to use by or on the order of a licensed veterinarian"; or

(b) Required by any applicable federal or state law or regulation to be dispensed on prescription only or is restricted to use by practitioners only.

(31) "Prescription" or "prescription drug order" means a written, oral or electronically transmitted direction, given by a practitioner authorized to prescribe drugs, for the preparation and use of a drug. When the context requires, "prescription" also means the drug prepared under such written, oral or electronically transmitted direction.

(32) "Retail drug outlet" means a place used for the conduct of the retail sale, administering or dispensing or compounding of drugs or chemicals or for the administering or dispensing of prescriptions and licensed by the board as a place wherein the practice of pharmacy may lawfully occur.

(33) "Shopkeeper" means a business or other establishment, open to the general public, for the sale or nonprofit distribution of drugs.

(34) "Unit dose" means a sealed single-unit container so designed that the contents are administered to the patient as a single dose, direct from the container. Each unit dose container must bear a separate label, be labeled with the name and strength of the medication, the name of the manufacturer or distributor, an identifying lot number and, if applicable, the expiration date of the medication.

(35) "Wholesale drug outlet" means any person who imports, stores, distributes or sells for resale any drugs including legend drugs and nonprescription drugs.

(36) "Class I wholesaler" means any person operating or maintaining a wholesale distribution center, wholesale business or any other business in which drugs, medicinal chemicals, or poisons are sold, dispensed, stocked, exposed or offered for sale at wholesale to a pharmacy or other legally licensed drug outlets or persons.

(37) "Class II wholesaler" means any person operating or maintaining a wholesale distribution center, wholesale business or any other business in which nonprescription drugs are offered for sale at wholesale to a drug outlet legally authorized to resell.

**SECTION 72.** ORS 689.115 is amended to read:

689.115. (1) The State Board of Pharmacy *[shall consist]* **consists** of *[seven]* **eight** members, *two of whom shall be representatives of the public, and the remaining Five of whom shall]* **appointed by the Governor and subject to confirmation by the Senate in the manner provided in ORS 171.562 and 171.565. All members of the board must be residents of this state. Of the members of the board:**

(a) **Five must** be licensed pharmacists. *[The members shall possess the qualifications specified in subsections (2) and (3) of this section.]*

(b) **One must be a pharmacy technician licensed under ORS 689.486.**

(c) **Two must be members of the public who are not licensed under this chapter or a spouse, domestic partner, child, parent or sibling of a person licensed under this chapter.**

**(2)(a) Board members required to be licensed pharmacists may be selected by the Governor from a list of three to five nominees for each vacancy, submitted by a task force assembled by the Oregon State Pharmacy Association to represent all of the interested pharmacy groups.**

[2] **(b) The public members of the State Board of Pharmacy [shall be residents of this state who] must be individuals who:**

**(A) Have attained the age of majority [and shall not be nor shall they ever have been a member];**

**(B) Are not former members** of the profession of pharmacy[, or persons who have any immediate family in the profession of pharmacy or persons who have ever had];

**(C) Do not have and have never had** any material financial interest in the providing of pharmacy service [or who have]; **and**

**(D) Have not** engaged in any activity directly related to the practice of pharmacy.

[3] **(c) The licensed pharmacist members of the board [shall] must,** at the time of their appointment:

[a] *Be residents of this state;*

[b] **(A) Be licensed and in good standing to engage in the practice of pharmacy in this state;**

[c] **(B) Be engaged in the practice of pharmacy in this state; and**

[d] **(C) Have five years of experience in the practice of pharmacy in this state after licensure.**

**(d) In selecting the members of the board, the Governor shall strive to balance the representation on the board according to:**

**(A) Geographic areas of this state; and**

**(B) Ethnic group.**

[4] *The Governor shall appoint the members of the State Board of Pharmacy, subject to the advice and consent of the Senate, and in accordance with the other provisions of subsection (5) of this section.*

[5] *At least five recommendations for appointment to each vacancy on the board may be made to the Governor by a task force assembled by the Oregon State Pharmacists Association to represent all of the interested pharmacy groups. Such nominations shall be recommendations only and shall not be binding in any manner upon the Governor.*

[6] **(3) [Any vacancy which occurs in the membership of the board for any reason, including expiration of term, removal, resignation, death, disability or disqualification, shall be filled by the Governor in the manner prescribed by subsections (4) and (5) of this section.] The term of office of each member is three years, but a member serves at the pleasure of the Governor.** The Governor shall fill vacancies which occur by expiration of full terms within 90 days prior to each date of expiration, and shall fill vacancies which occur for any other reason within 60 days after each such vacancy occurs.

**SECTION 73. ORS 689.125 is repealed.**

**NOTE:** Section 74 was repealed. Subsequent sections were not renumbered.

**SECTION 75. ORS 689.165 is amended to read:**

689.165. (1) The State Board of Pharmacy shall elect from its members a president and vice president and such other officers as it deems appropriate and necessary to the conduct of its business. The President of the State Board of Pharmacy shall preside at all meetings of the board and shall be responsible for the performance of all of the duties and functions of the board required or permitted by this chapter. If the president is absent or unable to preside, the vice president shall preside. Each additional officer elected by the board shall perform those duties normally associated with their position and such other duties assigned from time to time by the board.

(2) Officers elected by the board shall serve terms of one year commencing with the day of their election, and ending upon election of their successors and shall serve no more than one consecutive full term in each office to which they are elected.

(3) *[The board shall employ a licensed pharmacist who shall be an ex officio member of the board without vote to serve as a full-time employee of the board in the position of executive director.]* The

executive director **of the board** shall be responsible for the performance of the regular administrative functions of the board and such other duties as the board may direct. The executive director shall not perform any discretionary or decision-making functions for which the board is solely responsible.

**SECTION 76.** ORS 689.195 is amended to read:

689.195. (1) The State Board of Pharmacy may, in its discretion, employ persons in [*addition to the executive director in such other*] positions or capacities as it deems necessary to the proper conduct of board business and to the fulfillment of the board's responsibilities as defined by this chapter.

(2) The employees of the board other than the executive director shall receive, as compensation, an annual salary payable monthly, the amount of which shall be determined by law, and reimbursement for expenses incurred in connection with performance of their official duties.

**SECTION 77.** ORS 689.255 is amended to read:

689.255. (1) To obtain a license to engage in the practice of pharmacy, an applicant for licensure by examination shall:

(a) Have submitted a written application in the form prescribed by the State Board of Pharmacy.

(b) Have attained the age of 18 years.

(c) Be of good moral character and temperate habits.

(d) Have completed requirements for the first professional undergraduate degree as certified by a school or college of pharmacy which has been approved by the board.

(e) Have completed an internship or other program which has been approved by the board, or demonstrated to the board's satisfaction experience in the practice of pharmacy which meets or exceeds the minimum internship requirements of the board.

(f) Have successfully passed an examination [*given*] **approved** by the board.

(g) Have paid the fees specified by the board for examination and issuance of license.

(2)(a) [*The examination for licensure required under subsection (1)(f) of this section shall be given by the board at least two times during each fiscal year of the state.*] The board shall [*determine*] **approve** the content and subject matter of each examination[, *the place, time and date of administration of the examination and those persons who shall*] **and determine which persons** have successfully passed the examination.

(b) The examination shall be prepared to measure the competence of the applicant to engage in the practice of pharmacy. The board may employ and cooperate with any organization or consultant in the preparation and grading of an appropriate examination, but shall retain the sole discretion and responsibility of determining which applicants have successfully passed such an examination.

(3)(a) All applicants for licensure by examination shall obtain professional and practical experience in the practice of pharmacy concurrent with or after college attendance, or both, under such terms and conditions as the board shall determine.

(b) The board shall establish standards for internship or any other program necessary to qualify an applicant for the licensure examination based on nationally recognized standards of practice and shall also determine the necessary qualifications of any preceptors used in any internship or other program.

(4) Any person who has received a [*first*] professional [*undergraduate*] degree from a school or college of pharmacy located outside the United States which has not been approved by the board, but who is otherwise qualified to apply for a license to practice pharmacy in the State of Oregon may be deemed to have satisfied the degree requirements of subsection (1)(d) of this section by verification to the board of the academic record and graduation of the person and by meeting such other requirements as the board may establish. The board may require such person to successfully pass an examination or examinations given or approved by the board to establish proficiency in English and equivalency of education of such person with qualified graduates of a degree program referred to in subsection (1)(d) of this section as a prerequisite of taking the licensure examination provided for in subsection (1)(f) of this section.

**SECTION 78.** ORS 689.265 is amended to read:

689.265. (1) To obtain a license as a pharmacist by reciprocity, an applicant for licensure shall:

(a) Have submitted a written application in the form prescribed by the State Board of Pharmacy.

(b) Have attained the age of 18 years.

(c) Have good moral character and temperate habits.

(d) Have possessed at the time of initial licensure as a pharmacist such other qualifications necessary to have been eligible for licensure at that time in this state.

(e) Have engaged in the practice of pharmacy for a period of at least one year or have met the internship requirements of this state within the one-year period immediately previous to the date of such application.

(f) Have presented to the board proof of initial licensure by examination and proof that such license and any other license or licenses granted to the applicant by any other state or states have not been suspended, revoked, canceled or otherwise restricted for any reason except nonrenewal or the failure to obtain required continuing education credits in any state where the applicant is licensed but not engaged in the practice of pharmacy.

(g) Have successfully passed an examination in jurisprudence [*given*] **approved** by the board.

(h) Have paid the fees specified by the board for issuance of a license.

(i) Have submitted to the board proof of a professional [*undergraduate*] degree that meets the requirements of ORS 689.255 (4), if the applicant has received a [*first*] professional [*undergraduate*] degree from a school or college of pharmacy located outside the United States.

(2) No applicant shall be eligible for licensure by reciprocity unless the state in which the applicant was initially licensed as a pharmacist also grants reciprocal licensure to pharmacists duly licensed by examination in this state, under like circumstances and conditions.

**SECTION 79.** ORS 689.405 is amended to read:

689.405. (1) The State Board of Pharmacy may refuse to issue or renew, or may suspend, revoke or restrict the license of any person or the certificate of registration of any drug outlet upon one or more of the following grounds:

(a) Unprofessional conduct as that term is defined by the rules of the board.

(b) Repeated or gross negligence.

(c) Incapacity of a nature that prevents a person from engaging in the activity for which the person is licensed with reasonable skill, competence and safety to the public.

(d) [*Habitual or excessive use of intoxicants, drugs or controlled substances.*] **Impairment as defined in section 1 of this 2009 Act.**

(e) Being found guilty by the board of a violation of subparagraph (B) of this paragraph, or by a court of competent jurisdiction of one or more of the following:

(A) A felony, as defined by the laws of this state; or

(B) Violations of the pharmacy or drug laws of this state or rules pertaining thereto, or of statutes, rules or regulations of any other state, or of the federal government.

(f) Fraud or intentional misrepresentation by a licensee or registrant in securing or attempting to secure the issuance or renewal of a license.

(g) Engaging or aiding and abetting an individual to engage in the practice of pharmacy without a license, or falsely using the title of pharmacist.

(h) Aiding and abetting an individual in performing the duties of a pharmacy technician without licensing.

(i) Being found by the board to be in violation of any of the provisions of ORS 435.010 to 435.130, 453.025, 453.045, 475.035 to 475.190, 475.805, 475.840 to 475.980 or this chapter or rules adopted pursuant to ORS 435.010 to 435.130, 453.025, 453.045, 475.035 to 475.190, 475.805, 475.840 to 475.980 and this chapter.

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

(2) Upon receipt of a complaint under this chapter, the board shall conduct an investigation as described under ORS 676.165.

(3) Actions taken under subsection (1) of this section shall be considered a contested case under ORS chapter 183.

**SECTION 80.** ORS 689.508 is amended to read:

689.508. The original record of every prescription filled by a pharmacy must be kept on file **for three years** at the pharmacy **or as specified by State Board of Pharmacy rule**. The prescription record must contain the date of the transaction and the brand name, or if the drug has no brand name, the generic name and the name of the manufacturer of any drug substituted pursuant to ORS 689.515. If the prescription may be communicated to the pharmacy by oral or electronic means, the prescription information may be recorded and stored in an electronic form that allows for ready retrieval. Prescriptions maintained in the file required under this section must be readily accessible to the [State Board of Pharmacy] **board** for inspection.

#### **BOARD OF EXAMINERS OF LICENSED DIETITIANS**

**SECTION 81.** ORS 691.485 is amended to read:

691.485. (1) There is established a Board of Examiners of Licensed Dietitians [*within the Department of Human Services*] for the purpose of carrying out and enforcing the provisions of ORS 691.405 to 691.585. **The board consists of seven members appointed by the Governor and subject to confirmation by the Senate in the manner provided in ORS 171.562 and 171.565. All members of the board must be residents of this state. Of the members of the board:**

[*(2) The board shall consist of seven members appointed by the department of which.*]

(a) Two [*are*] **must be** members of the general public **who are not otherwise qualified for membership on the board and who are not a spouse, domestic partner, child, parent or sibling of a licensed dietitian;**

(b) One [*is*] **must be** a physician trained in clinical nutrition; and

(c) Four [*are*] **must be licensed** dietitians [*licensed under ORS 691.405 to 691.585*] who have been engaged in the practice of dietetics for no fewer than five years.

**(2)(a) Board members required to be licensed dietitians may be selected by the Governor from a list of three to five nominees for each vacancy, submitted by a professional organization representing dietitians.**

**(b) In selecting the members of the board, the Governor shall strive to balance the representation on the board according to:**

**(A) Geographic areas of this state; and**

**(B) Ethnic group.**

[*(3) Members of the board shall be appointed for three-year terms and are eligible for reappointment, but none shall serve more than two consecutive terms.*]

**(3) The term of office of each member is three years, but a member serves at the pleasure of the Governor.**

(4) Members of the board are entitled to compensation and expenses as provided in ORS 292.495.

**SECTION 82.** ORS 691.505 is amended to read:

691.505. The Board of Examiners of Licensed Dietitians shall:

[*(1) Hire and prescribe the duties of an executive secretary who shall serve at the direction of the board.*]

[*(2)*] **(1)** Determine the qualifications and fitness of applicants for licensure, renewal of license and reciprocal licenses.

[*(3)*] **(2)** Subject to the provisions of ORS chapter 183, adopt rules that are necessary to conduct its business, carry out its duties and administer ORS 691.405 to 691.585.

[*(4)*] **(3)** Examine, approve, issue, deny, revoke, suspend and renew licenses of dietitian applicants and licensees under ORS 691.405 to 691.585 and conduct hearings in connection with these actions.

[*(5)*] **(4)** Maintain a public record of every dietitian licensed in this state including places of business, residence and the date and number of their license.

[(6)] (5) Establish standards of professional responsibility and practice for persons licensed under ORS 691.405 to 691.585 that are consistent with those standards of professional responsibility and practice adopted by the American Dietetic Association.

[(7)] (6) Select a licensing examination offered by the Commission on Dietetic Registration or other examination.

[(8)] (7) Establish continuing education requirements for renewal of a license consistent with the requirements adopted by the Commission on Dietetic Registration.

[(9)] (8) Establish additional educational requirements for applicants for the previous five years of licensure.

[(10)] (9) Conduct hearings on complaints concerning violations of ORS 691.405 to 691.585 and the rules adopted under ORS 691.405 to 691.585.

[(11)] (10) Provide for examinations or waiver of examination for applicants.

[(12)] (11) Establish examination and licensing fees.

[(13)] (12) Request and receive the assistance of state educational institutions or other state agencies.

[(14)] (13) Prepare information of consumer interest describing the regulatory functions of the board and describing the procedures by which consumer complaints are filed with and resolved by the board. The board shall make the information available to the general public and appropriate state agencies.

**SECTION 83.** ORS 691.535 is amended to read:

691.535. The Board of Examiners of Licensed Dietitians may deny or refuse to renew a [licensee] **license** or may suspend or revoke a license or may impose probationary conditions where the licensee or applicant has [been guilty of]:

(1) **Committed** unprofessional conduct as defined by the standards of practice established by the board;

(2) [Obtaining] **Obtained** or [attempting] **attempted** to obtain a license by fraud, misrepresentation or concealment of material facts;

(3) [Violating] **Violated** any lawful order or rule adopted by the board which may affect the health, welfare or safety of the public; [or]

(4) **Committed** gross negligence or incompetence in the performance of professional duties[.];  
**or**

(5) **An impairment as defined in section 1 of this 2009 Act.**

## STATE MORTUARY AND CEMETERY BOARD

**SECTION 84.** ORS 692.180 is amended to read:

692.180. (1) Upon complaint or upon its own motion, the State Mortuary and Cemetery Board may investigate any complaint concerning any person, licensee or holder of a certificate of authority made by any person or by the board. If the board finds any of the causes described in this section in regard to any person, licensee or applicant or the holder of a certificate of authority, the board may impose a civil penalty of not more than \$1,000 for each violation, suspend or revoke a license to practice or to operate under this chapter or refuse to grant or renew a license. The causes are as follows:

(a) Misrepresentation in the conduct of business or in obtaining a license.

(b) Fraudulent or dishonest conduct, when the conduct bears a demonstrable relationship to funeral service practice, embalming practice or the operation of cemeteries or crematoriums.

(c) Except as provided in this paragraph, solicitation of human dead bodies by the licensee or any agent, assistant or employee of the licensee, either before or after death. This paragraph does not apply to:

(A) Activities permissible under ORS 97.923 to 97.949; or



(B) The sale, in accordance with provisions of the Insurance Code, of prearranged funeral or cemetery merchandise or services, or any combination thereof, to be funded by the contemporaneous or subsequent assignment of a life insurance policy or an annuity contract.

(d) Offensive treatment of dead human bodies or a body in the person's custody has been disposed of in violation of ORS chapter 432 or rules adopted pursuant thereto.

(e) Aiding or abetting a person who is not a licensee or an apprentice in any act involving the disposition of dead human bodies before the bodies undergo cremation, entombment or burial or before the bodies are transported out of the State of Oregon.

(f) Sale or reuse of any casket or body container that has been previously utilized for the placement of a deceased human body. This does not include use of a rental cover as defined in ORS 692.010.

(g) Violation of any of the provisions of this chapter or any rules adopted under this chapter.

(h) Violation of any provision of ORS 97.929 or 97.937 or regulations adopted by the Federal Trade Commission regulating funeral industry practices.

(i) Conviction of a crime, when the crime bears a demonstrable relationship to funeral service practice, embalming practice or the operation of cemeteries or crematoriums. A copy of the record of the conviction certified to by the clerk of the court entering the conviction shall be conclusive evidence of the conviction.

(j) Violation of ORS chapter 97 as it relates to disposition of human bodies and to cemeteries.

(k) Refusing to surrender promptly the custody of a dead human body, upon the express order of the person lawfully entitled to the custody of the body.

(L) Acting as the legal representative of any deceased person for whom the licensee has rendered services governed by this chapter. This subsection does not prohibit a licensee from acting as the legal representative of a deceased relative or a deceased licensee if the deceased licensee was a partner, employee or employer in the licensee's practice.

(m) Failure to pay any civil penalty imposed by the board within 10 days after the order is entered or, if appealed, within 10 days after the order is sustained on appeal.

**(n) Impairment as defined in section 1 of this 2009 Act.**

(2) All amounts recovered under this section shall be deposited in accordance with ORS 692.375.

(3) Civil penalties under this section shall be imposed as provided in ORS 183.745.

(4) Upon receipt of a complaint, the board shall conduct an investigation as described under ORS 676.165.

(5) Information that the board obtains as part of an investigation into licensee or applicant conduct or as part of a contested case proceeding, consent order or stipulated agreement involving licensee or applicant conduct is confidential as provided under ORS 676.175.

**SECTION 85.** ORS 692.300 is amended to read:

692.300. (1) There is created the State Mortuary and Cemetery Board [*in the Department of Human Services*] to carry out the purposes and enforce the provisions of this chapter. [*The board shall consist of 11 members. The members of the board shall be as follows:*] **The board consists of 11 members appointed by the Governor and subject to confirmation by the Senate in the manner provided in ORS 171.562 and 171.565. All members of the board must be residents of this state. Of the members of the board:**

(a) Two members [*shall*] **must** be licensed funeral service practitioners. One of the members under this paragraph [*shall*] **must** be a funeral service practitioner who does not offer embalming.

(b) One member [*shall*] **must** be a licensed embalmer.

(c) Three members [*shall*] **must** be representatives of cemeteries, one representing for-profit cemeteries, one representing a city or county owned or operated cemetery and one representing a special district owned or operated cemetery.

(d) One member [*shall*] **must** be a representative of a crematorium.

(e) Four members [*shall*] **must** be representatives of the public, one of whom [*shall*] **must** be a member of a recognized senior citizen organization.

(2)(a) Board members required to be licensed funeral service practitioners or licensed embalmers may be selected by the Governor from a list of three to five nominees for each vacancy, submitted by:

(A) Any professional organization representing funeral service practitioners, if the vacancy on the board is for a funeral service practitioner position; or

(B) Any professional organization representing embalmers, if the vacancy on the board is for an embalmer position.

(b) In selecting the members of the board, the Governor shall strive to balance the representation on the board according to:

(A) Geographic areas of this state; and

(B) Ethnic group.

[2] (3) The term of office of the members of the board shall be four years ending on December 31, **but a member serves at the pleasure of the Governor**. A member is eligible for no more than two consecutive terms. [*They shall be appointed by the Governor and hold office until the appointment and qualification of their successors.*]

**SECTION 86.** ORS 692.320 is amended to read:

692.320. (1) The State Mortuary and Cemetery Board has the power to adopt and enforce for the protection of the public health, safety and welfare reasonable rules relating to the following:

(a) The licensing of funeral service practitioners, embalmers, funeral establishments, crematoriums and cemeteries.

(b) The registration of apprentices.

(c) The practice of funeral service practitioners and embalmers, and the operation of funeral establishments, immediate disposition companies, crematoriums and cemeteries.

(d) Sanitary conditions of funeral establishments, crematoriums, cemeteries and any location in which dead human bodies are stored or processed prior to final disposition.

(e) Matters necessary to carry out the provisions of this chapter.

(2) Other than areas used as living quarters, the board shall inspect not less than once biennially the facilities and records of funeral establishments, cemeteries and crematoriums and immediate disposition companies and any location in which dead human bodies may be stored, temporarily held or processed prior to final disposition. The inspection of the records of such locations shall be limited to those records required to comply with this chapter or ORS chapter 432 or rules adopted pursuant thereto. The board may make random inspections at other times. The board shall employ one or more persons to perform such inspections and aid in the enforcement of this chapter and rules adopted thereunder. No person employed under this subsection may be a member of the board or actively engaged in a practice regulated by this chapter.

(3) The board may hold hearings, conduct investigations, subpoena witnesses, administer oaths and take testimony in order to carry out the provisions of this chapter.

(4) The board shall have a common seal and, subject to any applicable provision of the State Personnel Relations Law, may employ [*necessary administrative*] staff, fix the compensation for them and incur other necessary expenses.

## CONFLICT AMENDMENTS

**SECTION 87.** If House Bill 2058 becomes law, sections 10 (amending ORS 675.310), 18 (amending ORS 675.775), 34 (amending ORS 678.140), 40 (amending ORS 679.230), 69 (amending ORS 688.545) and 72 (amending ORS 689.115) of this 2009 Act are repealed.

**SECTION 88.** If Senate Bill 177 becomes law, section 12 of this 2009 Act (amending ORS 675.510) is repealed and ORS 675.510, as amended by section 1, chapter \_\_, Oregon Laws 2009 (Enrolled Senate Bill 177), is amended to read:

675.510. As used in ORS 675.510 to 675.600, unless the context requires otherwise:

(1) "Authorization to practice regulated social work" means a certificate or license issued by the State Board of Licensed Social Workers under ORS 675.510 to 675.600.

(2) “Clinical social work” means the professional practice of applying principles and methods with individuals, couples, families, children and groups, which include, but are not restricted to:

(a) Providing diagnostic, preventive and treatment services of a psychosocial nature pertaining to personality adjustment, behavior problems, interpersonal dysfunctioning or deinstitutionalization;

(b) Developing a psychotherapeutic relationship to employ a series of problem solving techniques for the purpose of removing, modifying, or retarding disrupted patterns of behavior, and for promoting positive personality growth and development;

(c) Counseling and the use of psychotherapeutic techniques, such as disciplined interviewing which is supportive, directive or insight oriented depending upon diagnosed problems, observation and feedback, systematic analysis, and recommendations;

(d) Modifying internal and external conditions that affect a client’s behavior, emotions, thinking, or intrapersonal processes;

(e) Explaining and interpreting the psychosocial dynamics of human behavior to facilitate problem solving; and

(f) Supervising, administering or teaching clinical social work practice.

[3] “*Impaired clinical social worker*” means a person who is unable to perform the practice of clinical social work by reason of mental illness, physical illness or alcohol or other drug abuse.]

[4] (3) “Regulated social worker” means a clinical social work associate certified under ORS 675.537 or a clinical social worker licensed under ORS 675.530.

[5] (4) “Unprofessional conduct” includes, but is not limited to, any conduct or practice contrary to recognized standards of ethics of the social work profession or any conduct that constitutes or might constitute a danger to the health or safety of a client or the public or in any other manner fails or might fail to adhere to the recognized standards of the profession.

**SECTION 88a. If Senate Bill 177 becomes law, section 2, chapter \_\_, Oregon Laws 2009 (Enrolled Senate Bill 177) (amending ORS 675.510), is repealed and ORS 675.510, as amended by section 1, chapter \_\_, Oregon Laws 2009 (Enrolled Senate Bill 177), and section 88 of this 2009 Act, is amended to read:**

675.510. As used in ORS 675.510 to 675.600, unless the context requires otherwise:

(1) “Authorization to practice regulated social work” means a certificate or license issued by the State Board of Licensed Social Workers under ORS 675.510 to 675.600.

(2) “Clinical social work” means the professional practice of applying principles and methods with individuals, couples, families, children and groups, which include, but are not restricted to:

(a) Providing diagnostic, preventive and treatment services of a psychosocial nature pertaining to personality adjustment, behavior problems, interpersonal dysfunctioning or deinstitutionalization;

(b) Developing a psychotherapeutic relationship to employ a series of problem solving techniques for the purpose of removing, modifying, or retarding disrupted patterns of behavior, and for promoting positive personality growth and development;

(c) Counseling and the use of psychotherapeutic techniques, such as disciplined interviewing which is supportive, directive or insight oriented depending upon diagnosed problems, observation and feedback, systematic analysis, and recommendations;

(d) Modifying internal and external conditions that affect a client’s behavior, emotions, thinking, or intrapersonal processes;

(e) Explaining and interpreting the psychosocial dynamics of human behavior to facilitate problem solving; and

(f) Supervising, administering or teaching clinical social work practice.

(3) “Regulated social worker” means a **baccalaureate social worker registered under section 6, chapter \_\_, Oregon Laws 2009 (Enrolled Senate Bill 177), a master’s social worker licensed under section 7, chapter \_\_, Oregon Laws 2009 (Enrolled Senate Bill 177)**, a clinical social work associate certified under ORS 675.537 or a clinical social worker licensed under ORS 675.530.

(4) “Unprofessional conduct” includes, but is not limited to, any conduct or practice contrary to recognized standards of ethics of the social work profession or any conduct that constitutes or

might constitute a danger to the health or safety of a client or the public or in any other manner fails or might fail to adhere to the recognized standards of the profession.

**SECTION 88b.** Section 50, chapter \_\_\_, Oregon Laws 2009 (Enrolled Senate Bill 177), is amended to read:

**Sec. 50.** Sections 4a, 6, 7, 12a and 12b, chapter \_\_\_, Oregon Laws 2009 (Enrolled Senate Bill 177), [of this 2009 Act and] the amendments to ORS [675.510 and] 675.530 by [sections 2 and 9 of this 2009 Act] **section 9, chapter \_\_\_, Oregon Laws 2009 (Enrolled Senate Bill 177), and the amendments to ORS 675.510 by section 88a of this 2009 Act** become operative on January 1, 2011.

**SECTION 89.** If House Bill 2345 becomes law and Senate Bill 177 does not become law, ORS 675.583, as amended by section 14 of this 2009 Act, is amended to read:

675.583. (1) A licensed clinical social worker shall report to the State Board of Clinical Social Workers any information the licensed clinical social worker has that appears to show that a licensed clinical social worker [*has or may have a physical illness that makes the clinical social worker unable to practice*] **is or may be an impaired professional as defined in section 1, chapter \_\_\_, Oregon Laws 2009 (Enrolled House Bill 2345)**, or may be guilty of unprofessional conduct according to the guidelines of the code of ethics, to the extent that disclosure does not conflict with the requirements of ORS 675.580.

(2) Any information that the board obtains pursuant to subsection (1) of this section is confidential as provided under ORS 676.175.

(3) Any person who reports or provides information to the board under subsection (1) of this section in good faith [*shall not be*] **is not** subject to an action for civil damages as a result [*thereof*] **of reporting or providing information to the board.**

**SECTION 89a.** If Senate Bill 177 becomes law, section 14 of this 2009 Act (amending ORS 675.583) is repealed and ORS 675.583, as amended by section 18, chapter \_\_\_, Oregon Laws 2009 (Enrolled Senate Bill 177), is amended to read:

675.583. (1) A regulated social worker shall report to the State Board of Licensed Social Workers any information the regulated social worker has that appears to show that a regulated social worker [*is or may be an impaired social worker, or*] **has or may have a physical illness that makes the regulated social worker unable to practice, or** may have engaged in unprofessional conduct according to the guidelines of the code of ethics, to the extent that disclosure does not conflict with the requirements of ORS 675.580.

(2) Notwithstanding ORS 676.175, any information that the board obtains pursuant to subsection (1) of this section is confidential and may not be disclosed except as provided by the board by rule.

(3) A person who reports or provides information to the board under subsection (1) of this section in good faith is not subject to an action for civil damages as a result thereof.

**SECTION 89b.** If both Senate Bill 177 and House Bill 2345 become law, ORS 675.583, as amended by section 18, chapter \_\_\_, Oregon Laws 2009 (Enrolled Senate Bill 177), and section 89a of this 2009 Act, is amended to read:

675.583. (1) A regulated social worker shall report to the State Board of Licensed Social Workers any information the regulated social worker has that appears to show that a regulated social worker [*has or may have a physical illness that makes the regulated social worker unable to practice*] **is or may be an impaired professional as defined in section 1, chapter \_\_\_, Oregon Laws 2009 (Enrolled House Bill 2345)**, or may have engaged in unprofessional conduct according to the guidelines of the code of ethics, to the extent that disclosure does not conflict with the requirements of ORS 675.580.

(2) Notwithstanding ORS 676.175, any information that the board obtains pursuant to subsection (1) of this section is confidential and may not be disclosed except as provided by the board by rule.

(3) A person who reports or provides information to the board under subsection (1) of this section in good faith is not subject to an action for civil damages as a result thereof.

**SECTION 89c.** The amendments to ORS 675.583 by sections 89 and 89b of this 2009 Act become operative on July 1, 2010.

**SECTION 90.** If Senate Bill 177 becomes law and House Bill 2058 does not become law, section 15 of this 2009 Act (amending ORS 675.590) is repealed and ORS 675.590, as amended by section 20, chapter \_\_\_, Oregon Laws 2009 (Enrolled Senate Bill 177), is amended to read:

675.590. (1) There is established a State Board of Licensed Social Workers. **The board shall consist of seven members appointed by the Governor and subject to confirmation by the Senate in the manner provided in ORS 171.562 and 171.565. All members of the board must be residents of this state. Of the members of the board:**

(a) **Four members must be clinical social workers licensed under ORS 675.530; and**

(b) **Three members must be members of the public who have demonstrated an interest in the field of clinical social work and who are not:**

(A) **Licensed clinical social workers; or**

(B) **A spouse, domestic partner, child, parent or sibling of a licensed clinical social worker.**

*[(2) The Governor shall appoint seven members to the board, consisting of members as specified in subsection (4) of this section.]*

**(2)(a) Board members required to be clinical social workers licensed under ORS 675.530 may be appointed from a list of three to five nominees for each vacancy, submitted by any professional organization that represents clinical social workers.**

**(b) In selecting the members of the board, the Governor shall strive to balance the representation on the board according to:**

(A) **Geographic areas of this state; and**

(B) **Ethnic group.**

(3) The term of office of each member is four years, but a member serves at the pleasure of the Governor. Before the expiration of the term of a member, the Governor shall appoint a successor whose term begins on July 1 next following. A member is eligible for one consecutive reappointment. If there is a vacancy for any cause, the Governor shall make an appointment to become immediately effective for the unexpired term.

*[(4) The composition of the board shall be as follows:]*

*[(a) Four members shall be clinical social workers licensed under ORS 675.530; and]*

*[(b) Three members shall be public members who have demonstrated an interest in the field of clinical social work.]*

*[(5)]* (4) **Members of the board** are entitled to compensation and expenses as provided in ORS 292.495.

**SECTION 90a.** If both Senate Bill 177 and House Bill 2058 become law, section 15 of this 2009 Act (amending ORS 675.590) is repealed.

**SECTION 91.** If Senate Bill 177 becomes law, section 16 of this 2009 Act (amending ORS 675.600) is repealed and ORS 675.600, as amended by section 23, chapter \_\_\_, Oregon Laws 2009 (Enrolled Senate Bill 177), is amended to read:

675.600. (1) The State Board of Licensed Social Workers shall:

(a) Pursuant to ORS chapter 183, make rules necessary to carry out the provisions of ORS 675.510 to 675.600.

(b) Publish annually a list of the names and addresses of all persons who have been authorized to practice regulated social work.

(c) Establish a program for *[impaired]* **regulated social workers who have an impairment as defined in section 1 of this 2009 Act or who are unable to practice due to physical illness**, to assist regulated social workers to regain or retain their authorizations to practice regulated social work and impose the requirement of participation as a condition to reissuance or retention of the authorization.

(d) Establish a voluntary arbitration procedure that may be invoked with the consent of clients and regulated social workers whereby disputes between clients and workers may be resolved.

(e) Report to the Legislative Assembly on its activities regarding authorizations to practice regulated social work during the preceding biennium.

*[(2) The board may appoint an administrator who may not be a member of the board. The board shall fix the compensation for the administrator.]*

*[(3)] (2) Any information obtained by the board as part of the [impaired social workers] program for regulated social workers who have an impairment is confidential and may not be disclosed except as provided by the board by rule.*

**SECTION 91a.** If House Bill 2345 becomes law and Senate Bill 177 does not become law, ORS 675.600, as amended by section 16 of this 2009 Act, is amended to read:

675.600. The State Board of Clinical Social Workers shall:

(1) Pursuant to ORS chapter 183, make rules necessary to carry out the provisions of ORS 675.510 to 675.600;

(2) Publish annually a list of the names and addresses of all persons who have been certified or licensed under ORS 675.510 to 675.600;

*[(3) Establish a program for clinical social workers who have an impairment as defined in section 1 of this 2009 Act or who are unable to practice due to physical illness, to assist licensed clinical social workers to regain or retain their certification or licensure and impose the requirement of participation as a condition to reissuance or retention of the certificate or license;]*

*[(4)] (3) Establish a voluntary arbitration procedure that may be invoked with the consent of clients and the licensed clinical social workers whereby disputes between clients and workers may be resolved; and*

*[(5)] (4) Report to the Legislative Assembly on its activities regarding the certification or licensure of clinical social workers during the preceding biennium.*

**SECTION 91b.** If both House Bill 2345 and Senate Bill 177 become law, ORS 675.600, as amended by section 23, chapter \_\_\_, Oregon Laws 2009 (Enrolled Senate Bill 177), and section 91 of this 2009 Act, is amended to read:

675.600. *[(1)]* The State Board of Licensed Social Workers shall:

*[(a)] (1) Pursuant to ORS chapter 183, make rules necessary to carry out the provisions of ORS 675.510 to 675.600.*

*[(b)] (2) Publish annually a list of the names and addresses of all persons who have been authorized to practice regulated social work.*

*[(c) Establish a program for regulated social workers who have an impairment as defined in section 1 of this 2009 Act or who are unable to practice due to physical illness, to assist regulated social workers to regain or retain their authorizations to practice regulated social work and impose the requirement of participation as a condition to reissuance or retention of the authorization.]*

*[(d)] (3) Establish a voluntary arbitration procedure that may be invoked with the consent of clients and regulated social workers whereby disputes between clients and workers may be resolved.*

*[(e)] (4) Report to the Legislative Assembly on its activities regarding authorizations to practice regulated social work during the preceding biennium.*

*[(2) Any information obtained by the board as part of the program for regulated social workers who have an impairment is confidential and may not be disclosed except as provided by the board by rule.]*

**SECTION 91c.** If both House Bill 2345 and Senate Bill 177 become law, ORS 675.600, as amended by section 23, chapter \_\_\_, Oregon Laws 2009 (Enrolled Senate Bill 177), and section 20, chapter \_\_\_, Oregon Laws 2009 (Enrolled House Bill 2345), is amended to read:

675.600. *[(1)]* The State Board of Licensed Social Workers shall:

*[(a)] (1) Pursuant to ORS chapter 183, adopt rules necessary to carry out the provisions of ORS 675.510 to 675.600.*

*[(b)] (2) Publish annually a list of the names and addresses of all persons who have been authorized to practice regulated social work.*

*[(c)] (3) Establish a voluntary arbitration procedure that may be invoked with the consent of clients and regulated social workers whereby disputes between clients and workers may be resolved.*

*[(d)] (4) Report to the Legislative Assembly on its activities regarding authorizations to practice regulated social work during the preceding biennium.*

[2) *The board may appoint an administrator who may not be a member of the board. The board shall fix the compensation for the administrator.*]

**SECTION 91d. The amendments to ORS 675.600 by sections 91a, 91b and 91c of this 2009 Act become operative July 1, 2010.**

**SECTION 92.** If House Bill 3232 becomes law, ORS 676.608, as amended by section 5a of this 2009 Act, is amended to read:

676.608. (1)(a) Upon its own motion, the Oregon Health Licensing Agency may initiate and conduct investigations of matters relating to the practice of occupations or professions subject to the authority of the boards, councils and programs listed in ORS 676.606.

(b) When the agency receives a complaint by any person against a holder [*of a certificate, permit, license or registration to practice issued by the agency*], the agency shall investigate the complaint as provided in ORS 676.165.

(2) While conducting an investigation authorized under subsection (1) of this section or a hearing related to an investigation, the agency may:

- (a) Take evidence;
- (b) Administer oaths;
- (c) Take the depositions of witnesses, including the person charged;
- (d) Compel the appearance of witnesses, including the person charged;
- (e) Require answers to interrogatories;
- (f) Compel the production of books, papers, accounts, documents and testimony pertaining to the matter under investigation; and
- (g) Conduct criminal and civil background checks to determine conviction of a crime that bears a demonstrable relationship to the field of practice.

(3) In exercising its authority under this section, the agency may issue subpoenas over the signature of the Director of the Oregon Health Licensing Agency or designated employee thereof and in the name of the State of Oregon.

(4) If a person fails to comply with a subpoena issued under this section, the judge of the Circuit Court for Marion County may compel obedience by initiating proceedings for contempt as in the case of disobedience of the requirements of a subpoena issued from the court.

(5) If necessary, the director, or an employee designated by the director, may appear before a magistrate empowered to issue warrants in criminal cases to request that the magistrate issue a warrant. The magistrate shall issue a warrant, directing it to any sheriff or deputy or police officer, to enter the described property, to remove any person or obstacle, to defend any threatened violence to the director or a designee of the director or an officer, upon entering private property, or to assist the director in enforcing the agency's authority in any way.

(6) In all investigations and hearings, the agency and any person affected thereby may have the benefit of counsel.

**SECTION 93. If House Bill 2058 becomes law, section 24 of this 2009 Act (amending ORS 677.235) is repealed and ORS 677.235, as amended by section 5, chapter \_\_, Oregon Laws 2009 (Enrolled House Bill 2058), is amended to read:**

677.235. (1) The Oregon Medical Board consists of 12 members appointed by the Governor and subject to confirmation by the Senate in the manner provided in ORS 171.562 and 171.565. All members of the board must be residents of this state. Of the members of the board:

- (a) Seven must have the degree of Doctor of Medicine;
- (b) Two must have the degree of Doctor of Osteopathy;
- (c) One must have the degree of Doctor of Podiatric Medicine; and
- (d) Two must be members of the public representing health consumers **and** who are not:
  - (A) Otherwise eligible for appointment to the board; **or**
  - (B) **A spouse, domestic partner, child, parent or sibling of an individual having the degree of Doctor of Medicine, Doctor of Osteopathy or Doctor of Podiatric Medicine.**

(2)(a)(A) Board members required to possess the degree of Doctor of Medicine may be selected by the Governor from a list of three to five physicians for each physician member of the board

whose term expires in that year, submitted by the Oregon Medical Association not later than February 1.

(B) Board members required to possess the degree of Doctor of Osteopathy may be selected by the Governor from a list of three to five qualified physicians for each vacancy, submitted by the Osteopathic Physicians and Surgeons of Oregon, Inc., not later than February 1 of each odd-numbered year.

(C) The board member required to possess the degree of Doctor of Podiatric Medicine may be selected by the Governor from a list of three to five qualified physicians submitted by the Oregon Podiatric Medical Association not later than February 1 of each fourth year.

(b) The physician members and the member who is a podiatric physician and surgeon must have been in the active practice of their profession for at least five years immediately preceding their appointment.

(c) Neither the public members nor any person who is a spouse, domestic partner, child, parent or sibling of a public member may be employed as a health professional. *[The public members are members of the investigative committee of the board.]*

(d)(A) In selecting the members of the board, the Governor shall strive to balance the representation on the board according to geographic areas of this state and ethnic group.

(B) Of the seven members who hold the degree of Doctor of Medicine, there shall be at least one member appointed from each federal congressional district.

(3)(a) The term of office of each board member is three years, but a member serves at the pleasure of the Governor. The terms must be staggered so that no more than four terms end each year. A term begins on March 1 of the year the member is appointed and ends on the last day of February of the third year thereafter. A member may not serve more than two consecutive terms.

(b) If a vacancy occurs on the board, another qualifying member possessing the same professional degree or fulfilling the same public capacity as the person whose position has been vacated shall be appointed as provided in this section to fill the unexpired term.

(c) A board member shall be removed immediately from the board if, during the member's term, the member:

(A) Is not a resident of this state;

(B) Has been absent from three consecutive board meetings, unless at least one absence is excused; or

(C) Is not a current licensee or a retired licensee whose license was in good standing at the time of retirement, if the board member was appointed to serve on the board as a licensee.

(4) Members of the board are entitled to compensation and expenses as provided in ORS 292.495. The board may provide by rule for compensation to board members for the performance of official duties at a rate that is greater than the rate provided in ORS 292.495.

**SECTION 94.** If House Bill 2345 becomes law, ORS 678.112, as amended by section 32 of this 2009 Act, is amended to read:

678.112. *[(1) When a person licensed to practice nursing voluntarily seeks treatment for an impairment or physical problem that otherwise may lead to formal disciplinary action under ORS 678.111, the Oregon State Board of Nursing may abstain from taking such formal disciplinary action if the board finds that the licensee can be treated effectively and that there is no danger to the public health, safety or welfare.]*

*[(2) If the board abstains from taking such formal disciplinary action, it may require the licensee to be subject to the voluntary monitoring program as established by the board.]*

*[(3) All records of the voluntary monitoring program are confidential and shall not be subject to public disclosure, nor shall the records be admissible as evidence in any judicial proceedings.]*

*[(4) A licensee voluntarily participating in the voluntary monitoring program shall not be subject to investigation or disciplinary action by the board for the same offense, if the licensee complies with the terms and conditions of the monitoring program.]*

*[(5) The board shall establish by rule criteria for eligibility to participate in the voluntary monitoring program and criteria for successful completion of the program.]*



[(6) *Licensees*] **Persons licensed to practice nursing** who elect not to participate in the [*voluntary monitoring program*] **impaired health professional program established under section 1b, chapter \_\_, Oregon Laws 2009 (Enrolled House Bill 2345)**, or who fail to comply with the terms of participation shall be reported to the [*board*] **Oregon State Board of Nursing** for formal disciplinary action under ORS 678.111.

**SECTION 94a.** The amendments to ORS 678.112 by section 94 of this 2009 Act become operative on July 1, 2010.

**SECTION 95.** If House Bill 2243 becomes law, sections 37 (amending ORS 678.780) and 38 (amending ORS 678.800) of this 2009 Act are repealed.

**SECTION 96.** If House Bill 2058 becomes law, section 47 of this 2009 Act (amending ORS 683.250) is repealed and ORS 683.250, as amended by section 18, chapter \_\_, Oregon Laws 2009 (Enrolled House Bill 2058), is amended to read:

683.250. (1) The Oregon Board of Optometry operates as a semi-independent state agency subject to ORS 182.456 to 182.472, for the purpose of carrying out this chapter. The board consists of five members appointed by the Governor and subject to confirmation by the Senate in the manner provided in ORS 171.562 and 171.565. All members of the board must be residents of this state. Of the members of the board:

- (a) Four must be doctors of optometry licensed and in practice in Oregon; and
- (b) One member must be a member of the public who represents health consumers and who [*is not*]:
  - (A) **Is not** otherwise eligible for appointment to the board; [*or*]
  - (B) **Is not** the spouse, domestic partner, child, parent or sibling of a doctor of optometry; and
  - (C) **Does not have a direct or indirect relationship to health care professionals, to the health care industry or to the ophthalmic optical industry.**

(2)(a) Board members required to be a doctor of optometry may be selected by the Governor from a list of three to five nominees for each vacancy, submitted by a professional organization representing doctors of optometry.

(b) In selecting the members of the board, the Governor shall strive to balance the representation on the board according to:

- (A) Geographic areas of this state; and
- (B) Ethnic group.

(3)(a) The term of office of each member is three years, but a member serves at the pleasure of the Governor. The terms must be staggered so that no more than two terms end each year. A member is eligible for reappointment. If a vacancy occurs in the membership of the board for any reason, the Governor shall make an appointment to become immediately effective for the unexpired term.

(b) Each member of the board shall qualify by taking and subscribing the oath of office required by the Oregon Constitution, which shall be filed in the office of the Secretary of State.

(c) A board member shall be removed immediately from the board if, during the member's term, the member:

- (A) Is not a resident of this state;
- (B) Has been absent from three consecutive board meetings, unless at least one absence is excused; or

(C) Is not a licensed doctor of optometry or a retired doctor of optometry who was a licensed doctor of optometry in good standing at the time of retirement, if the board member was appointed to serve on the board as a doctor of optometry.

(4) Members of the board are entitled to compensation and expenses as provided in ORS 292.495. The board may provide by rule for compensation to board members for the performance of official duties at a rate that is greater than the rate provided in ORS 292.495.

(5) A majority of the members [*constitute*] **constitutes** a quorum for the transaction of business.

**SECTION 97. If Senate Bill 131 becomes law, section 56 of this 2009 Act (amending ORS 685.110) is repealed and ORS 685.110, as amended by section 22, chapter 43, Oregon Laws 2009 (Enrolled Senate Bill 131), is amended to read:**

685.110. The Oregon Board of Naturopathic Medicine may refuse to grant a license, may suspend or revoke a license, may limit a license, may impose probation, may issue a letter of reprimand and may impose a civil penalty not to exceed \$1,000 for each offense for any of the following reasons:

- (1) Using fraud or deception in securing a license.
- (2) Impersonating another physician.
- (3) Practicing naturopathic medicine under an assumed name.
- (4) Performing an abortion.
- (5) Being convicted of a crime involving moral turpitude.
- (6) Any other reason that renders the applicant or licensee unfit to perform the duties of a naturopathic physician.
- (7) Being convicted of a crime relating to practice of naturopathic medicine.
- (8) Committing negligence related to the practice of naturopathic medicine.
- (9) [*Using intoxicants, drugs or controlled substances when the use is habitual or excessive*] **Having an impairment as defined in section 1 of this 2009 Act.**
- (10) Prescribing or dispensing drugs outside the scope of practice.
- [(11) *Being committed to a mental institution for the treatment of a mental disease that affects the ability of the applicant or licensee to safely practice naturopathic medicine.*]
- [(12)] **(11)** Obtaining a fee through fraud or misrepresentation.
- [(13)] **(12)** Committing gross or repeated malpractice.
- [(14)] **(13)** Representing to a patient that a manifestly incurable condition of sickness, disease or injury can be permanently cured.
- [(15)] **(14)** Engaging in any conduct or practice contrary to a recognized standard of ethics of the profession or any conduct or practice that does or might constitute a danger to the health or safety of a patient or the public or any conduct, practice or condition that does or might [*impair*] **adversely affect** a physician's ability safely and skillfully to practice naturopathic medicine.
- [(16)] **(15)** Willfully and consistently utilizing any naturopathic service, X-ray equipment or treatment contrary to recognized standards of practice of the naturopathic profession.
- [(17)] **(16)** Failing to notify the board within 30 days of a change in the location of practice or of mailing address.
- [(18)] **(17)** Attempting to practice naturopathic medicine or practicing or claiming to practice naturopathic medicine or any of its components in this state without first complying with the provisions of this chapter.
- [(19)] **(18)** Having a license to practice naturopathic medicine in another jurisdiction suspended or revoked.
- [(20)] **(19)** Employing unlicensed persons to practice naturopathic medicine.
- [(21)] **(20)** Practicing natural childbirth without first obtaining a certificate of special competency.

- [(22)] **(21)** Representing that the licensee is a medical specialist or practices a medical specialty.
- [(23)] **(22)** Failing to respond in a timely manner to a request for information regarding a complaint or the investigation of a complaint by the board.
- [(24)] **(23)** Failing to pay a civil penalty in the time specified by the order imposing the penalty.
- [(25)] **(24)** Violating any provision of this chapter or rules adopted by the board.

**SECTION 98. If House Bill 2009 becomes law and House Bill 2129 does not become law, section 57 of this 2009 Act (amending ORS 685.160) is repealed and ORS 685.160, as amended by section 1091, chapter \_\_, Oregon Laws 2009 (Enrolled House Bill 2009), is amended to read:**

685.160. (1) There hereby is created the Board of Naturopathic Examiners [*in the Oregon Health Authority*]. The board [*shall consist*] **consists** of seven members appointed by the Governor [*for terms of three years commencing*] **and subject to confirmation by the Senate in the manner provided**

in ORS 171.562 and 171.565. All members of the board must be residents of this state. Of the members of the board:

(a) Five must be naturopathic physicians who have each practiced continuously in this state for the five years immediately prior to the date of appointment.

(b) Two must be members of the general public who are not naturopathic physicians or a spouse, domestic partner, child, parent or sibling of a naturopathic physician.

(2)(a) Board members required to be naturopathic physicians may be selected by the Governor from a list of three to five nominees for each vacancy, submitted by a professional organization representing naturopathic physicians.

(b) In selecting the members of the board, the Governor shall strive to balance the representation on the board according to:

(A) Geographic areas of this state; and

(B) Ethnic group.

(3) The term of office of each member is three years, but a member serves at the pleasure of the Governor. A term of office commences July 1[, and]. Unless a member is removed prior to the end of the term, a member continues to serve on the board until [their successors are] a successor is appointed and qualified. A majority of the members of the board constitutes a quorum. If there is a vacancy for any cause, the Governor shall appoint a member to serve for the remainder of the unexpired term. [All appointments of members of the board by the Governor are subject to confirmation by the Senate in the manner provided in ORS 171.562 and 171.565.]

[2) Of the membership of the Board of Naturopathic Examiners:]

[a) All members must be citizens of this state.]

[b) Five members shall be naturopaths who have each practiced continuously in this state for the five years immediately prior to the date of appointment.]

[c) Two shall be members of the general public who do not possess the qualifications set forth in paragraph (b) of this subsection.]

[3)] (4) The board shall carry into effect the provisions of this chapter and is authorized to issue licenses to practice naturopathic medicine in this state. The possession of a common seal by the board hereby is authorized.

**SECTION 98a. If Senate Bill 131 becomes law and House Bill 2009 does not become law, section 1, chapter 43, Oregon Laws 2009 (Enrolled Senate Bill 131) (amending ORS 685.160), is repealed and ORS 685.160, as amended by section 57 of this 2009 Act, is amended to read:**

685.160. (1) There hereby is created the [Board of Naturopathic Examiners] **Oregon Board of Naturopathic Medicine**. The board consists of seven members appointed by the Governor and subject to confirmation by the Senate in the manner provided in ORS 171.562 and 171.565. All members of the board must be residents of this state. Of the members of the board:

(a) Five must be naturopathic physicians who have each practiced continuously in this state for the five years immediately prior to the date of appointment.

(b) Two must be members of the general public who are not naturopathic physicians or a spouse, domestic partner, child, parent or sibling of a naturopathic physician.

(2)(a) Board members required to be naturopathic physicians may be selected by the Governor from a list of three to five nominees for each vacancy, submitted by a professional organization representing naturopathic physicians.

(b) In selecting the members of the board, the Governor shall strive to balance the representation on the board according to:

(A) Geographic areas of this state; and

(B) Ethnic group.

(3) The term of office of each member is three years, but a member serves at the pleasure of the Governor. A term of office commences July 1. Unless a member is removed prior to the end of the term, a member continues to serve on the board until a successor is appointed and qualified. A

majority of the members of the board constitutes a quorum. If there is a vacancy for any cause, the Governor shall appoint a member to serve for the remainder of the unexpired term.

(4) The board shall carry into effect the provisions of this chapter and is authorized to issue licenses to practice naturopathic medicine in this state. The possession of a common seal by the board hereby is authorized.

**SECTION 98b.** If Senate Bill 131 becomes law and House Bills 2009 and 2058 do not become law, section 38, chapter 43, Oregon Laws 2009 (Enrolled Senate Bill 131), is amended to read:

**Sec. 38.** (1) The amendments to [*ORS 685.160 by section 1 of this 2009 Act*] **ORS 685.170 by section 28, chapter 43, Oregon Laws 2009 (Enrolled Senate Bill 131)**, are intended to change the name of the “Board of Naturopathic Examiners” to the “Oregon Board of Naturopathic Medicine.”

(2) For the purpose of harmonizing and clarifying statute sections published in Oregon Revised Statutes, the Legislative Counsel may substitute for words designating the “Board of Naturopathic Examiners,” wherever they occur in Oregon Revised Statutes, other words designating the “Oregon Board of Naturopathic Medicine.”

**SECTION 98c.** If both Senate Bill 131 and House Bill 2009 become law and House Bill 2129 does not become law, section 1, chapter 43, Oregon Laws 2009 (Enrolled Senate Bill 131) (amending ORS 685.160), is repealed and ORS 685.160, as amended by section 1091, chapter \_\_\_, Oregon Laws 2009 (Enrolled House Bill 2009), and section 98 of this 2009 Act, is amended to read:

685.160. (1) There hereby is created the [*Board of Naturopathic Examiners*] **Oregon Board of Naturopathic Medicine**. The board consists of seven members appointed by the Governor and subject to confirmation by the Senate in the manner provided in ORS 171.562 and 171.565. All members of the board must be residents of this state. Of the members of the board:

(a) Five must be naturopathic physicians who have each practiced continuously in this state for the five years immediately prior to the date of appointment.

(b) Two must be members of the general public who are not naturopathic physicians or a spouse, domestic partner, child, parent or sibling of a naturopathic physician.

(2)(a) Board members required to be naturopathic physicians may be selected by the Governor from a list of three to five nominees for each vacancy, submitted by a professional organization representing naturopathic physicians.

(b) In selecting the members of the board, the Governor shall strive to balance the representation on the board according to:

(A) Geographic areas of this state; and

(B) Ethnic group.

(3) The term of office of each member is three years, but a member serves at the pleasure of the Governor. A term of office commences July 1. Unless a member is removed prior to the end of the term, a member continues to serve on the board until a successor is appointed and qualified. A majority of the members of the board constitutes a quorum. If there is a vacancy for any cause, the Governor shall appoint a member to serve for the remainder of the unexpired term.

(4) The board shall carry into effect the provisions of this chapter and is authorized to issue licenses to practice naturopathic medicine in this state. The possession of a common seal by the board hereby is authorized.

**SECTION 98d.** If Senate Bill 131 and House Bill 2009 become law and House Bill 2058 does not become law, section 38, chapter 43, Oregon Laws 2009 (Enrolled Senate Bill 131), is amended to read:

**Sec. 38.** (1) The amendments to [*ORS 685.160 by section 1 of this 2009 Act*] **ORS 685.170 by section 28, chapter 43, Oregon Laws 2009 (Enrolled Senate Bill 131)**, are intended to change the name of the “Board of Naturopathic Examiners” to the “Oregon Board of Naturopathic Medicine.”

(2) For the purpose of harmonizing and clarifying statute sections published in Oregon Revised Statutes, the Legislative Counsel may substitute for words designating the “Board of Naturopathic Examiners,” wherever they occur in Oregon Revised Statutes, other words designating the “Oregon Board of Naturopathic Medicine.”

**SECTION 98e.** If House Bill 2009, House Bill 2129 and Senate Bill 131 become law and House Bill 2058 does not become law, ORS 685.160, as amended by section 1091, chapter \_\_\_, Oregon Laws 2009 (Enrolled House Bill 2009), and section 3, chapter \_\_\_, Oregon Laws 2009 (Enrolled House Bill 2129), is amended to read:

685.160. [(1) *There hereby is created the Oregon Board of Naturopathic Medicine. The board consists of seven members appointed by the Governor for terms of three years commencing July 1, and until their successors are appointed and qualified. A majority of the members of the board constitutes a quorum. If there is a vacancy for any cause, the Governor shall appoint a member to serve for the remainder of the unexpired term. All appointments of members of the board by the Governor are subject to confirmation by the Senate in the manner provided in ORS 171.562 and 171.565.*]

[(2) *Of the membership of the Oregon Board of Naturopathic Medicine:*]

[(a) *Five members shall be naturopaths who have each practiced continuously in this state for the five years immediately prior to the date of appointment.*]

[(b) *Two shall be members of the general public who do not possess the qualifications set forth in paragraph (a) of this subsection.*]

[(3) *All members of the board must be residents of this state.*]

**(1) There hereby is created the Oregon Board of Naturopathic Medicine. The board consists of seven members appointed by the Governor and subject to confirmation by the Senate in the manner provided in ORS 171.562 and 171.565. All members of the board must be residents of this state. Of the members of the board:**

**(a) Five must be naturopathic physicians who have each practiced continuously in this state for the five years immediately prior to the date of appointment.**

**(b) Two must be members of the general public who are not naturopathic physicians or a spouse, domestic partner, child, parent or sibling of a naturopathic physician.**

**(2)(a) Board members required to be naturopathic physicians may be selected by the Governor from a list of three to five nominees for each vacancy, submitted by a professional organization representing naturopathic physicians.**

**(b) In selecting the members of the board, the Governor shall strive to balance the representation on the board according to:**

**(A) Geographic areas of this state; and**

**(B) Ethnic group.**

**(3) The term of office of each member is three years, but a member serves at the pleasure of the Governor. A term of office commences July 1. Unless a member is removed prior to the end of the term, a member continues to serve on the board until a successor is appointed and qualified. A majority of the members of the board constitutes a quorum. If there is a vacancy for any cause, the Governor shall appoint a member to serve for the remainder of the unexpired term.**

**(4) The board shall carry into effect the provisions of this chapter and is authorized to issue licenses to practice naturopathic medicine in this state. The possession of a common seal by the board hereby is authorized.**

**SECTION 98f.** If House Bill 2009, House Bill 2129 and Senate Bill 131 become law and House Bill 2058 does not become law, ORS 685.160, as amended by section 57 of this 2009 Act, is amended to read:

685.160. (1) There hereby is created the [*Board of Naturopathic Examiners*] **Oregon Board of Naturopathic Medicine.** The board consists of seven members appointed by the Governor and subject to confirmation by the Senate in the manner provided in ORS 171.562 and 171.565. All members of the board must be residents of this state. Of the members of the board:

(a) Five must be naturopathic physicians who have each practiced continuously in this state for the five years immediately prior to the date of appointment.

(b) Two must be members of the general public who are not naturopathic physicians or a spouse, domestic partner, child, parent or sibling of a naturopathic physician.

(2)(a) Board members required to be naturopathic physicians may be selected by the Governor from a list of three to five nominees for each vacancy, submitted by a professional organization representing naturopathic physicians.

(b) In selecting the members of the board, the Governor shall strive to balance the representation on the board according to:

- (A) Geographic areas of this state; and
- (B) Ethnic group.

(3) The term of office of each member is three years, but a member serves at the pleasure of the Governor. A term of office commences July 1. Unless a member is removed prior to the end of the term, a member continues to serve on the board until a successor is appointed and qualified. A majority of the members of the board constitutes a quorum. If there is a vacancy for any cause, the Governor shall appoint a member to serve for the remainder of the unexpired term.

(4) The board shall carry into effect the provisions of this chapter and is authorized to issue licenses to practice naturopathic medicine in this state. The possession of a common seal by the board hereby is authorized.

**SECTION 98g. If House Bill 2009 and House Bill 2129 become law and House Bill 2058 and Senate Bill 131 do not become law, section 57 of this 2009 Act (amending ORS 685.160) is repealed and ORS 685.160, as amended by section 1091, chapter \_\_, Oregon Laws 2009 (Enrolled House Bill 2009), is amended to read:**

685.160. (1) There hereby is created the Board of Naturopathic Examiners [*in the Oregon Health Authority*]. The board [*shall consist*] **consists** of seven members appointed by the Governor [*for terms of three years commencing*] **and subject to confirmation by the Senate in the manner provided in ORS 171.562 and 171.565. All members of the board must be residents of this state. Of the members of the board:**

**(a) Five must be naturopathic physicians who have each practiced continuously in this state for the five years immediately prior to the date of appointment.**

**(b) Two must be members of the general public who are not naturopathic physicians or a spouse, domestic partner, child, parent or sibling of a naturopathic physician.**

**(2)(a) Board members required to be naturopathic physicians may be selected by the Governor from a list of three to five nominees for each vacancy, submitted by a professional organization representing naturopathic physicians.**

**(b) In selecting the members of the board, the Governor shall strive to balance the representation on the board according to:**

- (A) Geographic areas of this state; and**
- (B) Ethnic group.**

**(3) The term of office of each member is three years, but a member serves at the pleasure of the Governor. A term of office commences July 1[, and]. Unless a member is removed prior to the end of the term, a member continues to serve on the board until [*their successors are*] a successor is appointed and qualified. A majority of the members of the board constitutes a quorum. If there is a vacancy for any cause, the Governor shall appoint a member to serve for the remainder of the unexpired term. [*All appointments of members of the board by the Governor are subject to confirmation by the Senate in the manner provided in ORS 171.562 and 171.565.*]**

*[(2) Of the membership of the Board of Naturopathic Examiners:]*

*[(a) All members must be citizens of this state.]*

*[(b) Five members shall be naturopaths who have each practiced continuously in this state for the five years immediately prior to the date of appointment.]*

*[(c) Two shall be members of the general public who do not possess the qualifications set forth in paragraph (b) of this subsection.]*

**[(3)] (4) The board shall carry into effect the provisions of this chapter and is authorized to issue licenses to practice naturopathic medicine in this state. The possession of a common seal by the board hereby is authorized.**

**SECTION 99.** If House Bill 2345 becomes law, section 63 (amending ORS 687.081) of this 2009 Act is repealed.

**SECTION 100.** If House Bill 2058 becomes law, section 67 of this 2009 Act (amending ORS 688.160) is repealed and ORS 688.160, as amended by section 26, chapter \_\_, Oregon Laws 2009 (Enrolled House Bill 2058), is amended to read:

688.160. (1) The Physical Therapist Licensing Board operates as a semi-independent state agency subject to ORS 182.456 to 182.472, for purposes of carrying out the provisions of ORS 688.010 to 688.201 and 688.990 (1). The Physical Therapist Licensing Board consists of eight members appointed by the Governor and subject to confirmation by the Senate in the manner provided in ORS 171.562 and 171.565. All members of the board must be residents of this state. Of the members of the board:

(a) Five must be physical therapists who are Oregon residents, possess unrestricted licenses to practice physical therapy in this state, have been practicing in this state for at least two years immediately preceding their appointments and have been practicing in the field of physical therapy for at least five years.

(b) One must be a licensed physical therapist assistant.

(c) Two must be public members who have an interest in consumer rights and who are not:

(A) Otherwise eligible for appointment to the board; or

(B) The spouse, domestic partner, child, parent or sibling of a physical therapist or physical therapist assistant.

(2)(a) Board members required to be physical therapists or physical therapist assistants may be selected by the Governor from a list of three to five nominees for each vacancy, submitted by the Oregon Physical Therapy Association.

(b) In selecting the members of the board, the Governor shall strive to balance the representation on the board according to:

(A) Geographic areas of this state; and

(B) Ethnic group.

(3)(a) The term of office of each member is four years, but a member serves at the pleasure of the Governor. The terms must be staggered so that no more than three terms end each year. A member is eligible for reappointment.

(b) In the event of a vacancy in the office of a member of the board other than by reason of the expiration of a term, the Governor, not later than 90 days after the occurrence of the vacancy, shall appoint a person to fill the vacancy for the unexpired term.

(c) A board member shall be removed immediately from the board if, during the member's term, the member:

(A) Is not a resident of this state;

(B) Has been absent from three consecutive board meetings, unless at least one absence is excused;

(C) Is not a licensed physical therapist or a retired physical therapist who was a licensed physical therapist in good standing at the time of retirement, if the board member was appointed to serve on the board as a physical therapist; or

(D) Is not a licensed physical therapist assistant or a retired physical therapist assistant who was a licensed physical therapist assistant in good standing at the time of retirement, if the board member was appointed to serve on the board as a retired physical therapist assistant.

(4) Each member of the board is entitled to compensation and expenses as provided in ORS 292.495. The board may provide by rule for compensation to board members for the performance of official duties at a rate that is greater than the rate provided in ORS 292.495.

(5) A board member who acts within the scope of board duties, without malice and in reasonable belief that the member's action is warranted by law, is immune from civil liability.

(6) The board shall have power to:

(a) Establish matters of policy affecting administration of ORS 688.010 to 688.201;

(b) Provide for examinations for physical therapists and physical therapist assistants and adopt passing scores for the examinations;

- (c) Adopt rules necessary to carry out and enforce the provisions of ORS 688.010 to 688.201;
- (d) Establish standards and tests to determine the qualifications of applicants for licenses to practice physical therapy in this state;
- (e) Issue licenses to persons who meet the requirements of ORS 688.010 to 688.201;
- (f) Adopt rules relating to the supervision and the duties of physical therapist aides who assist in performing routine work under supervision;
- (g) Adopt rules establishing minimum continuing education requirements for all licensees;
- (h) Exercise general supervision over the practice of physical therapy within this state;
- (i) Establish and collect fees for the application or examination for, or the renewal, reinstatement or duplication of, a license under ORS 688.040, 688.080 or 688.100 or for the issuance of a temporary permit under ORS 688.110; and

(j) Establish and collect fees to carry out and enforce the provisions of ORS 688.010 to 688.201.

(7) The board shall meet as determined by the board and at any other time at the call of the board chairperson, who shall be elected by the members of the board. All members have equal voting privileges.

(8) The board may appoint and fix the compensation of *[an executive director and other]* staff as necessary to carry out the operations of the board.

(9) The board shall:

(a) Maintain a current list of all persons regulated under ORS 688.010 to 688.201, including the persons' names, current business and residential addresses, telephone numbers, electronic mail addresses and license numbers.

(b) Provide information to the public regarding the procedure for filing a complaint against a physical therapist or physical therapist assistant.

(c) Publish at least annually, and in a format or place determined by the board, final disciplinary actions taken against physical therapists and physical therapist assistants and other information, including rules, in order to guide physical therapists and physical therapist assistants regulated pursuant to ORS 688.010 to 688.201.

**SECTION 101. If House Bill 2009 becomes law and House Bill 2058 does not become law, section 69 (amending ORS 688.545) of this 2009 Act is repealed and ORS 688.545, as amended by section 1092, chapter \_\_, Oregon Laws 2009 (Enrolled House Bill 2009), is amended to read:**

688.545. (1)*[(a)]* There is created *[in the Oregon Health Authority]* a Board of Radiologic Technology *[consisting of nine members who shall be appointed by the Governor]*. **The board consists of nine members appointed by the Governor and subject to confirmation by the Senate in the manner provided in ORS 171.562 and 171.565.** Each member of the board *[shall be a citizen of the United States and]* **must be** a resident of *[the]* **this** state *[of Oregon. Each appointed member is entitled to vote]*.

*[(b)]* Of the members of the board:

*[(A)]* **(a)** One *[shall]* **must** be a radiologist;

*[(B)]* *At least one shall be a lay person;*

*[(C)]* **(b)** At least one *[shall]* **must** be a limited permit holder; *[and]*

*[(D)]* **(c)** At least five *[shall]* **must** be licensed practicing radiologic technologists, one of whom *[shall]* **must** be a radiation therapist*[,]*; **and**

**(d) At least one must be a member of the public. A public member appointed under this paragraph may not be:**

**(A) Otherwise eligible for appointment to the board; or**

**(B) The spouse, domestic partner, child, parent or sibling of a radiologist, limited permit holder or radiologic technologist.**

**(2)(a) Board members required to be limited permit holders or licensed practicing radiologic technologists may be selected by the Governor from a list of three to five nominees for each vacancy, submitted by:**



(A) A professional organization representing limited permit holders, if the vacancy is in a limited permit holder position;

(B) A professional organization representing radiation therapists, if the vacancy is in the radiation therapist position; or

(C) A professional organization representing radiologic technologists, if the vacancy is in a radiologic technologist or radiation therapist position.

(b) In selecting the members of the board, the Governor shall strive to balance the representation on the board according to:

(A) Geographic areas of this state; and

(B) Ethnic group.

[2] (3) The section manager of the Radiation Protection Services Section of the Oregon Health Authority, or a person appointed by the section manager, shall be an advisory member of the board for the purpose of providing counsel and *[shall not be]* **is not** entitled to vote.

[3] (4) The term of office of the members of the board *[shall be]* **is** three years *[and]*, **but a member serves at the pleasure of the Governor.** A member may be reappointed to serve not more than two full terms.

[4] (5) Members of the board *[shall be]* **are** entitled to compensation and expenses as provided in ORS 292.495.

[5] (6) The board shall annually elect a board chairperson and a vice chairperson from the members of the board.

[6] (7) For the purpose of transacting its business, the board shall meet at least once every three months at times and places designated by resolution. Special meetings may also be held at such times as the board may elect or at the call of the chairperson. Notification of the time, place and purpose of any special meeting shall be sent to all members of the board at least 15 days before the date of the meeting. All meetings are subject to ORS 192.610 to 192.690.

[7] (8) Five members of the board *[shall]* constitute a quorum for the transaction of business at any meeting. Five affirmative votes *[shall be]* **are** required to take action.

**SECTION 102. If House Bill 2009 becomes law and House Bill 2129 does not become law, section 81 of this 2009 Act (amending ORS 691.485) is repealed and ORS 691.485, as amended by section 1109, chapter \_\_, Oregon Laws 2009 (Enrolled House Bill 2009), is amended to read:**

691.485. (1) There is established a Board of Examiners of Licensed Dietitians *[within the Oregon Health Authority]* for the purpose of carrying out and enforcing the provisions of ORS 691.405 to 691.585. **The board consists of seven members appointed by the Governor and subject to confirmation by the Senate in the manner provided in ORS 171.562 and 171.565. All members of the board must be residents of this state. Of the members of the board:**

[2] *The board shall consist of seven members appointed by the authority of which:]*

(a) Two *[are]* **must be** members of the general public **who are not otherwise qualified for membership on the board and who are not a spouse, domestic partner, child, parent or sibling of a licensed dietitian;**

(b) One *[is]* **must be** a physician trained in clinical nutrition; and

(c) Four *[are]* **must be licensed** dietitians *[licensed under ORS 691.405 to 691.585]* who have been engaged in the practice of dietetics for no fewer than five years.

**(2)(a) Board members required to be licensed dietitians may be selected by the Governor from a list of three to five nominees for each vacancy, submitted by a professional organization representing dietitians.**

(b) In selecting the members of the board, the Governor shall strive to balance the representation on the board according to:

(A) Geographic areas of this state; and

(B) Ethnic group.

[3] *Members of the board shall be appointed for three-year terms and are eligible for reappointment, but none shall serve more than two consecutive terms.]*

(3) **The term of office of each member is three years, but a member serves at the pleasure of the Governor.**

(4) Members of the board are entitled to compensation and expenses as provided in ORS 292.495.

**SECTION 103. If House Bill 2009 becomes law and House Bill 2129 does not become law, section 85 of this 2009 Act (amending ORS 692.300) is repealed and ORS 692.300, as amended by section 1110, chapter \_\_, Oregon Laws 2009 (Enrolled House Bill 2009), is amended to read:**

692.300. (1) There is created the State Mortuary and Cemetery Board [*in the Oregon Health Authority*] to carry out the purposes and enforce the provisions of this chapter. [*The board shall consist of 11 members. The members of the board shall be as follows:*] **The board consists of 11 members appointed by the Governor and subject to confirmation by the Senate in the manner provided in ORS 171.562 and 171.565. All members of the board must be residents of this state. Of the members of the board:**

(a) Two members [*shall*] **must** be licensed funeral service practitioners. One of the members under this paragraph [*shall*] **must** be a funeral service practitioner who does not offer embalming.

(b) One member [*shall*] **must** be a licensed embalmer.

(c) Three members [*shall*] **must** be representatives of cemeteries, one representing for-profit cemeteries, one representing a city or county owned or operated cemetery and one representing a special district owned or operated cemetery.

(d) One member [*shall*] **must** be a representative of a crematorium.

(e) Four members [*shall*] **must** be representatives of the public, one of whom [*shall*] **must** be a member of a recognized senior citizen organization.

**(2)(a) Board members required to be licensed funeral service practitioners or licensed embalmers may be selected by the Governor from a list of three to five nominees for each vacancy, submitted by:**

**(A) Any professional organization representing funeral service practitioners, if the vacancy on the board is for a funeral service practitioner position; or**

**(B) Any professional organization representing embalmers, if the vacancy on the board is for an embalmer position.**

**(b) In selecting the members of the board, the Governor shall strive to balance the representation on the board according to:**

**(A) Geographic areas of this state; and**

**(B) Ethnic group.**

**[(2)] (3) The term of office of the members of the board shall be four years ending on December 31, but a member serves at the pleasure of the Governor. A member is eligible for no more than two consecutive terms. [*They shall be appointed by the Governor and hold office until the appointment and qualification of their successors.*]**

## APPLICABILITY

**SECTION 104. (1) The amendments to ORS 676.165 and 676.608 by sections 5 and 5a of this 2009 Act apply to complaints received on or after the effective date of this 2009 Act.**

**(2) The amendments to ORS 675.100, 675.310, 675.590, 675.775, 677.235, 678.140, 678.800, 679.230, 681.400, 681.410, 683.250, 683.260, 684.130, 685.160, 686.210, 687.115, 688.160, 688.545, 689.115, 691.485 and 692.300 by sections 7, 10, 15, 18, 24, 34, 38, 40, 43a, 44, 47, 48, 52, 57, 61, 64, 67, 69, 72, 81 and 85 of this 2009 Act:**

**(a) Apply to board membership appointments made on or after the effective date of this 2009 Act; and**

**(b) Do not disqualify any member of a board appointed before the effective date of this 2009 Act from completing the term to which the member was appointed.**

**(3) Sections 4 and 5c of this 2009 Act and the amendments to ORS 675.130, 675.320, 675.600, 675.785, 677.275, 678.150, 679.250, 681.450, 685.170, 686.210, 688.160, 688.555, 689.165, 691.505 and**

**692.320 by sections 8, 11, 16, 19, 27, 35, 41, 45, 58, 61, 67, 70, 75, 82 and 86 of this 2009 Act do not affect the employment status or seniority of any person employed by a health professional regulatory board before the effective date of this 2009 Act.**

**(4) Section 2 of this 2009 Act applies to persons who receive a license or whose license is renewed on or after the effective date of this 2009 Act.**

**SECTION 104a.** If House Bill 2058 becomes law, section 104 of this 2009 Act is amended to read:

**Sec. 104.** (1) The amendments to ORS 676.165 and 676.608 by sections 5 and 5a of this 2009 Act apply to complaints received on or after the effective date of this 2009 Act.

(2) The amendments to ORS 675.100, [675.310,] 675.590, [675.775,] 677.235, [678.140,] 678.800, [679.230,] 681.400, 681.410, 683.250, 683.260, 684.130, 685.160, 686.210, 687.115, 688.160, [688.545, 689.115,] 691.485 and 692.300 by sections 7, [10,] 15, [18, 24, 34,] 38, [40,] 43a, 44, [47,] 48, 52, 57, 61, 64, [67, 69, 72,] 81, [and] 85, **93, 96 and 100** of this 2009 Act:

(a) Apply to board membership appointments made on or after the effective date of this 2009 Act; and

(b) Do not disqualify any member of a board appointed before the effective date of this 2009 Act from completing the term to which the member was appointed.

(3) Sections 4 and 5c of this 2009 Act and the amendments to ORS 675.130, 675.320, 675.600, 675.785, 677.275, 678.150, 679.250, 681.450, 685.170, 686.210, 688.160, 688.555, 689.165, 691.505 and 692.320 by sections 8, 11, 16, 19, 27, 35, 41, 45, 58, 61, [67,] 70, 75, 82, [and] 86 **and 100** of this 2009 Act do not affect the employment status or seniority of any person employed by a health professional regulatory board before the effective date of this 2009 Act.

(4) Section 2 of this 2009 Act applies to persons who receive a license or whose license is renewed on or after the effective date of this 2009 Act.

**SECTION 104b.** If Senate Bill 177 becomes law and House Bill 2058 does not become law, section 104 of this 2009 Act is amended to read:

**Sec. 104.** (1) The amendments to ORS 676.165 and 676.608 by sections 5 and 5a of this 2009 Act apply to complaints received on or after the effective date of this 2009 Act.

(2) The amendments to ORS 675.100, 675.310, 675.590, 675.775, 677.235, 678.140, 678.800, 679.230, 681.400, 681.410, 683.250, 683.260, 684.130, 685.160, 686.210, 687.115, 688.160, 688.545, 689.115, 691.485 and 692.300 by sections 7, 10, [15,] 18, 24, 34, 38, 40, 43a, 44, 47, 48, 52, 57, 61, 64, 67, 69, 72, 81, [and] 85 **and 90** of this 2009 Act:

(a) Apply to board membership appointments made on or after the effective date of this 2009 Act; and

(b) Do not disqualify any member of a board appointed before the effective date of this 2009 Act from completing the term to which the member was appointed.

(3) Sections 4 and 5c of this 2009 Act and the amendments to ORS 675.130, 675.320, 675.600, 675.785, 677.275, 678.150, 679.250, 681.450, 685.170, 686.210, 688.160, 688.555, 689.165, 691.505 and 692.320 by sections 8, 11, [16,] 19, 27, 35, 41, 45, 58, 61, 67, 70, 75, 82, [and] 86 **and 91** of this 2009 Act do not affect the employment status or seniority of any person employed by a health professional regulatory board before the effective date of this 2009 Act.

(4) Section 2 of this 2009 Act applies to persons who receive a license or whose license is renewed on or after the effective date of this 2009 Act.

**SECTION 104c.** If both Senate Bill 177 and House Bill 2058 become law, section 104 of this 2009 Act is amended to read:

**Sec. 104c.** (1) The amendments to ORS 676.165 and 676.608 by sections 5 and 5a of this 2009 Act apply to complaints received on or after the effective date of this 2009 Act.

(2) The amendments to ORS 675.100, 675.310, [675.590,] 675.775, 677.235, 678.140, 678.800, 679.230, 681.400, 681.410, 683.250, 683.260, 684.130, 685.160, 686.210, 687.115, 688.160, 688.545, 689.115, 691.485 and 692.300 by sections 7, 10, [15,] 18, 24, 34, 38, 40, 43a, 44, 47, 48, 52, 57, 61, 64, 67, 69, 72, 81 and 85 of this 2009 Act:

(a) Apply to board membership appointments made on or after the effective date of this 2009 Act; and

(b) Do not disqualify any member of a board appointed before the effective date of this 2009 Act from completing the term to which the member was appointed.

(3) Sections 4 and 5c of this 2009 Act and the amendments to ORS 675.130, 675.320, 675.600, 675.785, 677.275, 678.150, 679.250, 681.450, 685.170, 686.210, 688.160, 688.555, 689.165, 691.505 and 692.320 by sections 8, 11, [16,] 19, 27, 35, 41, 45, 58, 61, 67, 70, 75, 82, [and] 86 **and 91** of this 2009 Act do not affect the employment status or seniority of any person employed by a health professional regulatory board before the effective date of this 2009 Act.

(4) Section 2 of this 2009 Act applies to persons who receive a license or whose license is renewed on or after the effective date of this 2009 Act.

**SECTION 104d.** If House Bill 2243 becomes law, section 104 of this 2009 Act is amended to read:

**Sec. 104.** (1) The amendments to ORS 676.165 and 676.608 by sections 5 and 5a of this 2009 Act apply to complaints received on or after the effective date of this 2009 Act.

(2) The amendments to ORS 675.100, 675.310, 675.590, 675.775, 677.235, 678.140, [678.800,] 679.230, 681.400, 681.410, 683.250, 683.260, 684.130, 685.160, 686.210, 687.115, 688.160, 688.545, 689.115, 691.485 and 692.300 by sections 7, 10, 15, 18, 24, 34, [38,] 40, 43a, 44, 47, 48, 52, 57, 61, 64, 67, 69, 72, 81 and 85 of this 2009 Act:

(a) Apply to board membership appointments made on or after the effective date of this 2009 Act; and

(b) Do not disqualify any member of a board appointed before the effective date of this 2009 Act from completing the term to which the member was appointed.

(3) Sections 4 and 5c of this 2009 Act and the amendments to ORS 675.130, 675.320, 675.600, 675.785, 677.275, 678.150, 679.250, 681.450, 685.170, 686.210, 688.160, 688.555, 689.165, 691.505 and 692.320 by sections 8, 11, 16, 19, 27, 35, 41, 45, 58, 61, 67, 70, 75, 82 and 86 of this 2009 Act do not affect the employment status or seniority of any person employed by a health professional regulatory board before the effective date of this 2009 Act.

(4) Section 2 of this 2009 Act applies to persons who receive a license or whose license is renewed on or after the effective date of this 2009 Act.

**SECTION 104e.** If House Bill 2009 becomes law, section 104 of this 2009 Act is amended to read:

**Sec. 104.** (1) The amendments to ORS 676.165 and 676.608 by sections 5 and 5a of this 2009 Act apply to complaints received on or after the effective date of this 2009 Act.

(2) The amendments to ORS 675.100, 675.310, 675.590, 675.775, 677.235, 678.140, 678.800, 679.230, 681.400, 681.410, 683.250, 683.260, 684.130, 685.160, 686.210, 687.115, 688.160, 688.545, 689.115, 691.485 and 692.300 by sections 7, 10, 15, 18, 24, 34, 38, 40, 43a, 44, 47, 48, 52, [57,] 61, 64, 67, 69, 72, [81 and 85] **98, 102 and 103** of this 2009 Act:

(a) Apply to board membership appointments made on or after the effective date of this 2009 Act; and

(b) Do not disqualify any member of a board appointed before the effective date of this 2009 Act from completing the term to which the member was appointed.

(3) Sections 4 and 5c of this 2009 Act and the amendments to ORS 675.130, 675.320, 675.600, 675.785, 677.275, 678.150, 679.250, 681.450, 685.170, 686.210, 688.160, 688.555, 689.165, 691.505 and 692.320 by sections 8, 11, 16, 19, 27, 35, 41, 45, 58, 61, 67, 70, 75, 82 and 86 of this 2009 Act do not affect the employment status or seniority of any person employed by a health professional regulatory board before the effective date of this 2009 Act.

(4) Section 2 of this 2009 Act applies to persons who receive a license or whose license is renewed on or after the effective date of this 2009 Act.

**SECTION 104f.** If House Bill 2009 becomes law and House Bill 2058 does not become law, section 104 of this 2009 Act is amended to read:

**Sec. 104.** (1) The amendments to ORS 676.165 and 676.608 by sections 5 and 5a of this 2009 Act apply to complaints received on or after the effective date of this 2009 Act.

(2) The amendments to ORS 675.100, 675.310, 675.590, 675.775, 677.235, 678.140, 678.800, 679.230, 681.400, 681.410, 683.250, 683.260, 684.130, 685.160, 686.210, 687.115, 688.160, 688.545, 689.115, 691.485 and 692.300 by sections 7, 10, 15, 18, 24, 34, 38, 40, 43a, 44, 47, 48, 52, 57, 61, 64, 67, [69,] 72, 81, [and] 85 **and 101** of this 2009 Act:

(a) Apply to board membership appointments made on or after the effective date of this 2009 Act; and

(b) Do not disqualify any member of a board appointed before the effective date of this 2009 Act from completing the term to which the member was appointed.

(3) Sections 4 and 5c of this 2009 Act and the amendments to ORS 675.130, 675.320, 675.600, 675.785, 677.275, 678.150, 679.250, 681.450, 685.170, 686.210, 688.160, 688.555, 689.165, 691.505 and 692.320 by sections 8, 11, 16, 19, 27, 35, 41, 45, 58, 61, 67, 70, 75, 82 and 86 of this 2009 Act do not affect the employment status or seniority of any person employed by a health professional regulatory board before the effective date of this 2009 Act.

(4) Section 2 of this 2009 Act applies to persons who receive a license or whose license is renewed on or after the effective date of this 2009 Act.

**CAPTIONS**

**SECTION 105.** The unit captions used in this 2009 Act are provided only for the convenience of the reader and do not become part of the statutory law of this state or express any legislative intent in the enactment of this 2009 Act.

**Passed by House June 15, 2009**

**Received by Governor:**

**Repassed by House June 29, 2009**

.....M.,....., 2009

**Approved:**

.....  
Chief Clerk of House

.....M.,....., 2009

.....  
Speaker of House

.....  
Governor

**Passed by Senate June 27, 2009**

**Filed in Office of Secretary of State:**

.....M.,....., 2009

.....  
President of Senate

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Secretary of State