

A-Engrossed
House Bill 2345

Ordered by the House May 1
Including House Amendments dated May 1

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of House Interim Committee on Health Care)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

[Requires health profession licensing boards to develop process for dealing with impaired professionals. Establishes uniform standards for monitoring impaired professionals. Directs health profession licensing boards to impose sanctions on impaired professionals.]

Directs Department of Human Services to establish or contract to establish impaired health professional program. Specifies components of program.

Directs Oregon Department of Administrative Services to establish monitoring entity for impaired professionals. Specifies duties of monitoring entity.

Authorizes health profession licensing boards to participate in impaired health professional program. Specifies procedures by which board may refer licensee to program. Prohibits boards from establishing alternate impaired health professional programs.

Requires Department of Human Services to report on program to Governor, Legislative Assembly and health profession licensing boards on or before January 31, 2011.

Deletes existing impaired professional programs of health profession licensing boards.

Applies to licensees identified by health profession licensing boards, and disciplinary proceedings commenced, on or after *[January]* July 1, 2010.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to impaired health professionals; creating new provisions; amending ORS 192.690, 675.410,
3 675.510, 675.583, 675.600, 675.785, 678.112, 678.410, 684.010 and 687.081; repealing ORS 677.615,
4 677.625, 677.635, 677.645, 677.655, 677.665, 677.677, 684.103, 684.157, 689.342, 689.344, 689.346,
5 689.348, 689.352, 689.354 and 689.356; and declaring an emergency.

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

7 **SECTION 1. As used in sections 1 to 1c of this 2009 Act:**

8 **(1) "Health profession licensing board" means:**

9 **(a) A health professional regulatory board as defined in ORS 676.160; or**

10 **(b) The Oregon Health Licensing Agency for a board, council or program listed in ORS**
11 **676.606.**

12 **(2) "Impaired professional" means a licensee who is unable to practice with professional**
13 **skill and safety by reason of habitual or excessive use or abuse of drugs, alcohol or other**
14 **substances that impair ability or by reason of a mental health disorder.**

15 **(3) "Licensee" means a health professional licensed or certified by or registered with a**
16 **health profession licensing board.**

17 **SECTION 1a. (1)(a) A health profession licensing board that is authorized by law to take**
18 **disciplinary action against licensees may adopt rules opting to participate in the impaired**
19 **health professional program established under section 1b of this 2009 Act.**

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 (b) A board may only refer impaired professionals to the impaired health professional
2 program established under section 1b of this 2009 Act and may not establish the board's own
3 impaired health professional program.

4 (c) A board may adopt rules establishing additional requirements for licensees referred
5 to the impaired health professional program established under section 1b of this 2009 Act.

6 (2) If a board participates in the impaired health professional program, the board shall
7 establish by rule a procedure for referring licensees to the program. The procedure must
8 provide that, before the board refers a licensee to the program, the board shall ensure that:

9 (a) An independent third party approved by the board to evaluate alcohol or substance
10 abuse or mental health disorders has diagnosed the licensee with alcohol or substance abuse
11 or a mental health disorder and provided the diagnosis and treatment options to the licensee
12 and the board;

13 (b) The board has investigated to determine whether the licensee's professional practice
14 while impaired has presented or presents a danger to the public; and

15 (c) The licensee consents to the entry of the licensee's name and fingerprints in the Law
16 Enforcement Data System established in ORS 181.730.

17 (3)(a) For the purpose of requesting state or nationwide criminal records checks under
18 ORS 181.534, a board may require the fingerprints of a licensee before referring the licensee
19 to the impaired health professional program.

20 (b) Notwithstanding ORS 181.534 (5) and (6), the Department of State Police shall main-
21 tain in the department's files fingerprint cards submitted to the department for purposes of
22 conducting a state or nationwide criminal records check under paragraph (a) of this sub-
23 section.

24 (c) A board is a designated agency for purposes of ORS 181.010 to 181.560 and 181.715 to
25 181.730.

26 (4) A board that participates in the impaired health professional program shall investi-
27 gate reports received from the monitoring entity established under section 1c of this 2009
28 Act. If the board finds that a licensee is substantially noncompliant with a diversion agree-
29 ment entered into under section 1b of this 2009 Act, the board may suspend, restrict, modify
30 or revoke the licensee's license or end the licensee's participation in the impaired health
31 professional program.

32 (5) A board may not discipline a licensee solely because the licensee:

33 (a) Self-refers to or participates in the impaired health professional program;

34 (b) Has been diagnosed with alcohol or substance abuse or a mental health disorder; or

35 (c) Used controlled substances before entry into the impaired health professional pro-
36 gram, if the licensee did not practice while impaired.

37 **SECTION 1b.** (1) The Department of Human Services shall establish or contract to es-
38 tablish an impaired health professional program. The program must:

39 (a) Enroll licensees of participating health profession licensing boards who have been di-
40 agnosed with alcohol or substance abuse or a mental health disorder;

41 (b) Require that a licensee sign a written consent prior to enrollment in the program
42 allowing disclosure and exchange of information between the program, the licensee's board,
43 the licensee's employer, evaluators and treatment entities in compliance with 42 C.F.R. part
44 2;

45 (c) Enter into diversion agreements with enrolled licensees;

1 (d) Assess and evaluate compliance with diversion agreements by enrolled licensees;

2 (e) Assess the ability of an enrolled licensee's employer to supervise the licensee and
3 require an enrolled licensee's employer to establish minimum training requirements for
4 supervisors of enrolled licensees;

5 (f) Report substantial noncompliance with a diversion agreement to the monitoring entity
6 established under section 1c of this 2009 Act within one business day after the program
7 learns of the substantial noncompliance, including but not limited to information that a
8 licensee:

9 (A) Engaged in criminal behavior;

10 (B) Engaged in conduct that caused injury, death or harm to the public, including en-
11 gaging in sexual impropriety with a patient;

12 (C) Was impaired in a health care setting in the course of the licensee's employment;

13 (D) Received a positive toxicology test result as determined by federal regulations per-
14 taining to drug testing;

15 (E) Violated a restriction on the licensee's practice imposed by the program or the
16 licensee's board;

17 (F) Was admitted to the hospital for mental illness or adjudged to be mentally incompe-
18 tent;

19 (G) Entered into a diversion agreement, but failed to participate in the program; or

20 (H) Was referred to the program but failed to enroll in the program; and

21 (g) At least weekly, submit a list of licensees who are enrolled in the program and a list
22 of licensees who successfully complete the program to the monitoring entity established un-
23 der section 1c of this 2009 Act.

24 (2) When the program reports noncompliance to the monitoring entity, the report must
25 include:

26 (a) A description of the noncompliance;

27 (b) A copy of a report from the independent third party who diagnosed the licensee under
28 section 1a (2)(a) of this 2009 Act or subsection (5)(a) of this section stating the licensee's
29 diagnosis;

30 (c) A copy of the licensee's diversion agreement; and

31 (d) The licensee's employment status.

32 (3) The program may not diagnose or treat licensees enrolled in the program.

33 (4) The diversion agreement required by subsection (1) of this section must:

34 (a) Require the licensee to consent to disclosure and exchange of information between
35 the program, the licensee's board, the licensee's employer, evaluators and treatment pro-
36 viders, in compliance with 42 C.F.R. part 2;

37 (b) Require that the licensee comply continuously with the agreement for at least two
38 years to successfully complete the program;

39 (c) Require that the licensee abstain from mind-altering or intoxicating substances or
40 potentially addictive drugs, unless the drug is prescribed for a documented medical condition
41 by a person authorized by law and approved by the program to prescribe the drug to the
42 licensee;

43 (d) Require the licensee to report use of mind-altering or intoxicating substances or po-
44 tentially addictive drugs within 24 hours;

45 (e) Require the licensee to agree to participate in a treatment plan approved by a third

1 party;

2 (f) Contain limits on the licensee's practice of the licensee's health profession;

3 (g) Provide for employer monitoring of the licensee;

4 (h) Provide that the program may require an evaluation of the licensee's fitness to
5 practice before removing the limits on the licensee's practice of the licensee's health pro-
6 fession;

7 (i) Require the licensee to submit to random drug or alcohol testing in accordance with
8 federal regulations;

9 (j) Require the licensee to report at least weekly to the program regarding the licensee's
10 compliance with the agreement;

11 (k) Require the licensee to report arrests, applications for licensure in other states,
12 changes in employment and changes in practice setting; and

13 (L) Provide that the licensee is responsible for the cost of evaluations, toxicology testing
14 and treatment.

15 (5) A licensee of a board participating in the program may self-refer to the program.
16 Before a self-referred licensee is enrolled in the program, the program shall:

17 (a) Require that an independent third party approved by the licensee's board to evaluate
18 alcohol or substance abuse or mental health disorders has diagnosed the licensee with alco-
19 hol or substance abuse or a mental health disorder;

20 (b) Require the licensee to attest that the licensee is not under investigation by the
21 licensee's board; and

22 (c) Investigate to determine whether the licensee's practice while impaired has presented
23 or presents a danger to the public.

24 (6) The department shall adopt rules establishing a fee to be paid by the boards partic-
25 ipating in the impaired health professional program for administration of the program.

26 (7) The department shall arrange for an independent third party to audit the program to
27 ensure compliance with program guidelines. The department shall report the results of the
28 audit to the Legislative Assembly, the Governor and the health profession licensing boards.
29 The report may not contain individually identifiable information about licensees.

30 (8) The department may adopt rules to carry out this section.

31 **SECTION 1c.** (1) The Oregon Department of Administrative Services shall establish a
32 monitoring entity for impaired professionals. The monitoring entity shall:

33 (a) Compare the weekly lists submitted by the impaired health professional program un-
34 der section 1b of this 2009 Act to determine if any enrollees are no longer participating in
35 the impaired health professional program; and

36 (b) Report to a health profession licensing board when:

37 (A) The monitoring entity receives a report from the impaired health professional pro-
38 gram established under section 1b of this 2009 Act that a licensee is substantially
39 noncompliant with the licensee's diversion agreement;

40 (B) Comparison of the weekly lists submitted by the impaired health professional pro-
41 gram under section 1b of this 2009 Act shows that a licensee is no longer participating in the
42 impaired health professional program; and

43 (C) The monitoring entity receives a report from the impaired health professional pro-
44 gram under section 1b of this 2009 Act that a licensee referred by the board has completed
45 the impaired health professional program.

1 **(2) The monitoring entity may not have any contact with a licensee and has no discretion**
2 **in deciding whether to make a report required under this section.**

3 **(3) If a licensee self-refers to the impaired health professional program, the monitoring**
4 **entity may not report the licensee’s enrollment or successful completion of the impaired**
5 **health professional program to the licensee’s board.**

6 **(4) The department shall arrange for an independent third party to audit the monitoring**
7 **entity to ensure compliance with program guidelines. The department shall report the re-**
8 **sults of the audit to the Legislative Assembly, the Governor and the health profession li-**
9 **censing boards. The report may not contain individually identifiable information about**
10 **licensees.**

11 **(5) The department may adopt rules assessing fees to health profession licensing boards**
12 **participating in the program for the costs of administering the monitoring entity.**

13 **SECTION 2.** ORS 675.410 is amended to read:

14 675.410. (1) The Oregon Health Licensing Agency shall:

15 (a) Issue certifications to persons determined by the agency to be qualified.

16 (b) Make all disbursements necessary to carry out the provisions of ORS 675.360 to 675.410.

17 (c) Maintain a registry of all current certified sex offender therapists. The registry shall be made
18 available to the public online.

19 (d) Keep a record of its proceedings related to the issuance, refusal, suspension and revocation
20 of certifications issued under ORS 675.360 to 675.380.

21 *[(e) Approve or sanction programs for impaired professionals to assist any certified sex offender*
22 *therapist to regain or retain certification and shall impose the requirement of participation in the pro-*
23 *gram as a condition to reissuance or retention of certification.]*

24 *[(f)]* (e) In consultation with the Sex Offender Treatment Board, create a multidisciplinary ad-
25 visory committee within the board. Persons who are not board members may be appointed as non-
26 voting members to serve on the multidisciplinary advisory committee with the approval of the board.

27 (2) The agency may:

28 (a) Deny, suspend, revoke or refuse to issue or renew any certification issued under ORS 675.360
29 to 675.380.

30 (b) Provide for waivers of examinations, grandfathering requirements and temporary certif-
31 ications as considered appropriate.

32 (c) In consultation with the Sex Offender Treatment Board, create any committees within the
33 board as deemed necessary. Persons who are not board members may be appointed as nonvoting
34 members to serve on the committees with the approval of the board.

35 **SECTION 3.** ORS 675.510 is amended to read:

36 675.510. As used in ORS 675.510 to 675.600, unless the context requires otherwise:

37 (1) “Board” means the State Board of Clinical Social Workers.

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

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

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

45 (c) Counseling and the use of psychotherapeutic techniques, such as disciplined interviewing

1 which is supportive, directive or insight oriented depending upon diagnosed problems, observation
2 and feedback, systematic analysis, and recommendations;

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

5 (e) Explaining and interpreting the psychosocial dynamics of human behavior to facilitate prob-
6 lem solving; and

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

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

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

14 [(5)] (4) "Licensed clinical social worker" means a person licensed under the provisions of ORS
15 675.510 to 675.600 to practice clinical social work.

16 [(6)] (5) "Unprofessional conduct" includes, but is not limited to, any conduct or practice con-
17 trary to recognized standards of ethics of the social work profession or any conduct that constitutes
18 or might constitute a danger to the health or safety of a client or the public or in any other manner
19 fails or might fail to adhere to the recognized standards of the profession.

20 **SECTION 4.** ORS 675.583 is amended to read:

21 675.583. (1) A licensed clinical social worker shall report to the State Board of Clinical Social
22 Workers any information the licensed clinical social worker has that appears to show that a licensed
23 clinical social worker is or may be an impaired [*clinical social worker*] **professional as defined in**
24 **section 1 of this 2009 Act**, or may be guilty of unprofessional conduct according to the guidelines
25 of the code of ethics, to the extent that disclosure does not conflict with the requirements of ORS
26 675.580.

27 (2) Any information that the board obtains pursuant to subsection (1) of this section is confi-
28 dential as provided under ORS 676.175.

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

32 **SECTION 5.** ORS 675.600 is amended to read:

33 675.600. (1) The State Board of Clinical Social Workers shall:

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

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

38 [(c) *Establish a program for impaired clinical social workers to assist licensed clinical social*
39 *workers to regain or retain their certification or licensure and impose the requirement of participation*
40 *as a condition to reissuance or retention of the certificate or license;*]

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

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

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

3 **SECTION 6.** ORS 675.785 is amended to read:

4 675.785. The Oregon Board of Licensed Professional Counselors and Therapists has the following
5 powers:

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

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

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

12 (a) License application.

13 (b) First issuance of a license.

14 (c) Renewal of a license.

15 (d) Late filing of a license renewal.

16 (e) Renewal of registration as an intern.

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

22 (4) The board shall:

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

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

28 (5) The board shall:

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

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

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

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

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

45 (9) The board may administer oaths, take depositions, defray legal expenses and issue subpoenas

1 to compel the attendance of witnesses and the production of documents or written information nec-
2 essary to carry out ORS 675.715 to 675.835.

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

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

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

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

15 (14) The standards committee shall establish standards and requirements for continuing educa-
16 tion and supervision, as appropriate. [*The standards and requirements shall be in effect July 1,*
17 *1992.*]

18 [*(15) The board shall establish a program for licensees whose ability to perform professional*
19 *counseling is impaired to assist those licensees in regaining or retaining their licensure and shall im-*
20 *pose the requirement of participation as a condition to reissuance or retention of the license.*]

21 [(16)] (15) For the purpose of requesting a state or nationwide criminal records check under ORS
22 181.534, the board may require the fingerprints of a person who is:

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

26 **SECTION 7.** ORS 678.112 is amended to read:

27 678.112. [(1) *When a person licensed to practice nursing voluntarily seeks treatment for chemical*
28 *dependency or an emotional or physical problem that otherwise may lead to formal disciplinary action*
29 *under ORS 678.111, the Oregon State Board of Nursing may abstain from taking such formal disci-*
30 *plinary action if the board finds that the licensee can be treated effectively and that there is no danger*
31 *to the public health, safety or welfare.*]

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

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

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

39 [(5) *The board shall establish by rule criteria for eligibility to participate in the voluntary moni-*
40 *toring program and criteria for successful completion of the program.*]

41 [(6) *Licensees*] **Persons licensed to practice nursing** who elect not to participate in the [*vol-*
42 *untary monitoring program*] **impaired health professional program established under section 1b**
43 **of this 2009 Act** or who fail to comply with the terms of participation shall be reported to the board
44 for formal disciplinary action under ORS 678.111.

45 **SECTION 8.** ORS 678.410 is amended to read:

- 1 678.410. (1) The Oregon State Board of Nursing may impose fees for the following:
- 2 (a) License renewal.
- 3 (b) Examination.
- 4 (c) License by indorsement.
- 5 (d) Limited license.
- 6 (e) Examination proctor service.
- 7 (f) Duplicate license.
- 8 (g) Extension of limited license.
- 9 (h) Nurse practitioner certificate.
- 10 (i) Reexamination for licensure.
- 11 (j) Delinquent fee.
- 12 (k) Renewal fee nurse practitioner.
- 13 (L) Verification of a license of a nurse applying for license by indorsement in another state.
- 14 (m) Certified nurse practitioner's initial application and registration for writing prescriptions.
- 15 (n) Renewal of certified nurse practitioner's application for writing prescriptions.
- 16 (o) Approval of training program for nursing assistants.
- 17 (p) Issuance, renewal and delinquency of a nursing assistant certificate.
- 18 [(q) *Voluntary monitoring program for chemical dependency or an emotional or physical*
- 19 *problem.*]
- 20 [(r)] (q) Clinical nurse specialist certification established pursuant to ORS 678.370.
- 21 [(s)] (r) Clinical nurse specialist's initial application for prescriptive authority.
- 22 [(t)] (s) Renewal of clinical nurse specialist's application for prescriptive authority.
- 23 [(u)] (t) Inactive license or certificate.
- 24 [(v)] (u) Retired license or certificate.
- 25 [(w)] (v) Nationwide criminal records check.
- 26 (2) Fees are nonrefundable.
- 27 (3) Subject to prior approval of the Oregon Department of Administrative Services and a report
- 28 to the Emergency Board prior to adopting the fees and charges, the fees and charges established
- 29 under this section shall not exceed the cost of administering the regulatory program of the board
- 30 pertaining to the purpose for which the fee or charge is established, as authorized by the Legislative
- 31 Assembly within the board's budget, as the budget may be modified by the Emergency Board. If
- 32 federal or other funds are available to offset costs of administering the program, fees shall be es-
- 33 tablished based on net costs to the state but not to exceed \$75 per biennium for the certification fee
- 34 under subsection (1)(p) of this section.
- 35 **SECTION 9.** ORS 684.010 is amended to read:
- 36 684.010. As used in this chapter:
- 37 (1) "Active senior" means a person who:
- 38 (a) Is licensed under ORS 684.054;
- 39 (b) Is at least 60 years of age; and
- 40 (c) Has been in practice for 25 years or more.
- 41 (2) "Chiropractic" is defined as:
- 42 (a) That system of adjusting with the hands the articulations of the bony framework of the hu-
- 43 man body, and the employment and practice of physiotherapy, electrotherapy, hydrotherapy and
- 44 minor surgery.
- 45 (b) The chiropractic diagnosis, treatment and prevention of body dysfunction; correction, main-

1 tenance of the structural and functional integrity of the neuro-musculoskeletal system and the ef-
2 fects thereof or interferences therewith by the utilization of all recognized and accepted chiropractic
3 diagnostic procedures and the employment of all rational therapeutic measures as taught in ap-
4 proved chiropractic colleges.

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

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

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

16 [(6)] (5) "Minor surgery" means the use of electrical or other methods for the surgical repair
17 and care incident thereto of superficial lacerations and abrasions, benign superficial lesions, and the
18 removal of foreign bodies located in the superficial structures; and the use of antiseptics and local
19 anesthetics in connection therewith.

20 **SECTION 10.** ORS 687.081 is amended to read:

21 687.081. (1) The State Board of Massage Therapists may discipline a licensee, deny, suspend,
22 revoke or refuse to renew a license, issue a reprimand, censure a licensee or place a licensee on
23 probation if the licensee:

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

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

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

30 (d) Is habitually intemperate in the use of alcoholic beverages or is addicted to the use of
31 habit-forming drugs or controlled substances.

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

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

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

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

37 (i) Engages in unprofessional or dishonorable conduct.

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

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

44 (a) Limitation on the allowed scope of practice.

45 (b) [If the board finds that the licensee is physically or mentally impaired, a requirement for suc-

1 *cessful completion of appropriate treatment as determined by the board]* **Referral to the impaired**
2 **health professional program established under section 1b of this 2009 Act.**

3 (c) Individual or peer supervision.

4 (d) Such other conditions as the board may [*deem*] **consider** necessary for the protection of the
5 public and the rehabilitation of the licensee.

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

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

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

17 (a) The person's past history in observing the provisions of ORS 687.011 to 687.250, 687.895 and
18 687.991 and the rules adopted pursuant thereto;

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

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

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

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

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

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

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

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

34 **SECTION 11.** ORS 192.690, as amended by section 8, chapter 796, Oregon Laws 2007, is
35 amended to read:

36 192.690. (1) ORS 192.610 to 192.690 do not apply to the deliberations of the State Board of Parole
37 and Post-Prison Supervision, the Psychiatric Security Review Board, state agencies conducting
38 hearings on contested cases in accordance with the provisions of ORS chapter 183, the review by
39 the Workers' Compensation Board or the Employment Appeals Board of similar hearings on con-
40 tested cases, meetings of the state lawyers assistance committee operating under the provisions of
41 ORS 9.568, [*meetings of the Health Professionals Program Supervisory Council established under ORS*
42 *677.615,*] meetings of the personal and practice management assistance committees operating under
43 the provisions of ORS 9.568, the county multidisciplinary child abuse teams required to review child
44 abuse cases in accordance with the provisions of ORS 418.747, the child fatality review teams re-
45 quired to review child fatalities in accordance with the provisions of ORS 418.785, the peer review

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

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

13 **SECTION 12.** The Department of Human Services shall report on the impaired health
14 professional program established under section 1b of this 2009 Act to the Governor, to the
15 Legislative Assembly as provided in ORS 192.245 and to health profession licensing boards
16 as defined in section 1 of this 2009 Act on or before January 31, 2011.

17 **SECTION 13.** ORS 677.615, 677.625, 677.635, 677.645, 677.655, 677.665, 677.677, 684.103,
18 684.157, 689.342, 689.344, 689.346, 689.348, 689.352, 689.354 and 689.356 are repealed.

19 **SECTION 14.** Sections 1 to 1c of this 2009 Act, the amendments to ORS 192.690, 675.410,
20 675.510, 675.583, 675.600, 675.785, 678.112, 678.410, 684.010 and 687.081 by sections 2 to 11 of this
21 2009 Act and the repeal of ORS 677.615, 677.625, 677.635, 677.645, 677.655, 677.665, 677.677,
22 684.103, 684.157, 689.342, 689.344, 689.346, 689.348, 689.352, 689.354 and 689.356 by section 13 of
23 this 2009 Act apply to:

24 (1) A licensee who is the subject of a complaint filed with a health profession licensing
25 board on or after July 1, 2010;

26 (2) A licensee about whom a board receives information that the licensee may be im-
27 paired on or after July 1, 2010; and

28 (3) A disciplinary proceeding commenced on or after July 1, 2010.

29 **SECTION 15.** (1) Sections 1 to 1c of this 2009 Act, the amendments to ORS 192.690,
30 675.410, 675.510, 675.583, 675.600, 675.785, 678.112, 678.410, 684.010 and 687.081 by sections 2 to
31 11 of this 2009 Act and the repeal of ORS 677.615, 677.625, 677.635, 677.645, 677.655, 677.665,
32 677.677, 684.103, 684.157, 689.342, 689.344, 689.346, 689.348, 689.352, 689.354 and 689.356 by section
33 13 of this 2009 Act become operative July 1, 2010.

34 (2) A health profession licensing board as defined in section 1 of this 2009 Act may take
35 any action before the operative date specified in subsection (1) of this section that is neces-
36 sary to enable the board to exercise, on and after the operative date specified in subsection
37 (1) of this section, all the duties, functions and powers conferred on the board by this 2009
38 Act.

39 **SECTION 16.** Section 12 of this 2009 Act is repealed on January 2, 2012.

40 **SECTION 17.** This 2009 Act being necessary for the immediate preservation of the public
41 peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect
42 on its passage.
43