

House Bill 2346

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SUMMARY

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

Limits authority of health professional regulatory boards to conduct mental, physical or competency examinations, assessments or evaluations to cases in which board determines there is objectively reasonable basis for believing licensee or applicant poses danger to patient health or safety. Permits licensee or applicant to request contested case hearing to determine need for mental, physical or competency examination, assessment or evaluation. Provides exceptions permitting immediate conduct of examination, assessment or evaluation.

Applies to board determinations of need for mental, physical or competency examinations, assessments or evaluations occurring on or after effective date of Act.

A BILL FOR AN ACT

1
2 Relating to the authority of health professional regulatory boards; creating new provisions; and
3 amending ORS 677.190, 677.420, 678.113, 679.250, 684.100, 686.260 and 688.140.

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

5 **SECTION 1. Section 2 of this 2009 Act is added to and made a part of ORS 676.165 to**
6 **676.180.**

7 **SECTION 2. (1) Except as provided in subsection (2) of this section, a health professional**
8 **regulatory board may not require a mental, physical or competency examination, assessment**
9 **or evaluation as part of an investigation by the board of a complaint against a licensee or**
10 **applicant or an investigation initiated by the board.**

11 **(2) A health professional regulatory board may require that a licensee or applicant un-**
12 **dergo a mental, physical or competency examination, assessment or evaluation if:**

13 **(a) There is an objectively reasonable basis to believe that the licensee or applicant poses**
14 **a danger to patient health or safety;**

15 **(b) The examination, assessment or evaluation is performed by impartial and independent**
16 **professionals who are qualified by their professions to conduct the examination, assessment**
17 **or evaluation; and**

18 **(c) The examination, assessment or evaluation is performed in a cost-effective manner,**
19 **if the licensee or applicant must incur the cost of conducting the examination, assessment**
20 **or evaluation.**

21 **(3) A health professional regulatory board seeking to require an examination, assessment**
22 **or evaluation under subsection (2) of this section shall give notice to the licensee or applicant**
23 **of the intended action in a manner that satisfies the requirements of ORS 183.415. The**
24 **licensee or applicant has a right to a contested case hearing under ORS chapter 183 if the**
25 **licensee or applicant requests the hearing by the later of:**

26 **(a) Twenty days after receipt of the notice described in this subsection; or**

27 **(b) The expiration of the period of time established by rule of the board for requesting a**

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 **hearing following receipt of the notice described in this subsection.**

2 (4) **If the licensee or applicant does not make a timely request for a contested case**
 3 **hearing, the notice issued under subsection (3) of this section shall be the final order re-**
 4 **quiring the examination, assessment or evaluation.**

5 (5) **Subsections (1) to (4) of this section do not apply to:**

6 (a) **The actions of a health professional regulatory board that is acting to suspend or**
 7 **refuse to renew a license under ORS 183.430 (2); or**

8 (b) **Any examination being required by a health professional regulatory board to deter-**
 9 **mine illegal drug use by a licensee or applicant.**

10 **SECTION 3. Section 2 of this 2009 Act applies to mental, physical or competency exam-**
 11 **inations, assessments or evaluations required by a health professional regulatory board on**
 12 **or after the effective date of this 2009 Act.**

13 **SECTION 4.** ORS 677.190 is amended to read:

14 677.190. The Oregon Medical Board may refuse to grant, or may suspend or revoke a license to
 15 practice for any of the following reasons:

16 (1)(a) Unprofessional or dishonorable conduct.

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

19 (A) "Alternative medical treatment" means:

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

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

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

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

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

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

37 (4) Obtaining any fee by fraud or misrepresentation.

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

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

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

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

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

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

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

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

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

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

18 (15) Incapacity to practice medicine or podiatry. If the board has evidence indicating incapacity,
 19 the board may, **upon compliance with section 2 of this 2009 Act**, order a licensee to submit to
 20 a standardized competency examination. The licensee shall have access to the result of the exam-
 21 ination and to the criteria used for grading and evaluating the examination. If the examination is
 22 given orally, the licensee shall have the right to have the examination recorded.

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

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

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

30 (19) Failing to report the change of the location of practice of the licensee as required by ORS
 31 677.172.

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

34 (21) Making a fraudulent claim.

35 (22)(a) Performing psychosurgery.

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

41 (23) Refusing an invitation for an informal interview with the board requested under ORS
 42 677.415.

43 (24) Violation of the federal Controlled Substances Act.

44 (25) Prescribing controlled substances without a legitimate medical purpose, or prescribing
 45 controlled substances without following accepted procedures for examination of patients, or pre-

1 scribing controlled substances without following accepted procedures for record keeping.

2 (26) Failure by the licensee to report to the board any adverse action taken against the licensee
 3 by another licensing jurisdiction or any peer review body, health care institution, professional or
 4 medical society or association, governmental agency, law enforcement agency or court for acts or
 5 conduct similar to acts or conduct that would constitute grounds for disciplinary action as described
 6 in this section.

7 (27) Failure by the licensee to notify the board of the licensee’s voluntary resignation from the
 8 staff of a health care institution or voluntary limitation of a licensee’s staff privileges at the insti-
 9 tution if that action occurs while the licensee is under investigation by the institution or a com-
 10 mittee thereof for any reason related to medical incompetence, unprofessional conduct or mental or
 11 physical impairment.

12 **SECTION 5.** ORS 677.420 is amended to read:

13 677.420. (1) Notwithstanding any other provisions of this chapter, the Oregon Medical Board
 14 may at any time direct and order a mental, physical or medical competency examination or any
 15 combination thereof, and make such investigation, including the taking of depositions or otherwise
 16 in order to fully inform itself with respect to the performance or conduct of a licensee.

17 (2) If the board has reasonable cause to believe that any licensee is or may be unable to practice
 18 medicine or podiatry with reasonable skill and safety to patients, the board shall cause a compe-
 19 tency examination of such licensee for purposes of determining the fitness of the licensee to practice
 20 medicine or podiatry with reasonable skill and safety to patients.

21 (3) Any licensee by practicing or by filing a registration to practice medicine or podiatry shall
 22 be deemed to have given consent to submit to mental or physical examination when so directed by
 23 the board and, further, to have waived all objection to the admissibility of information derived from
 24 such mental or physical or medical competency examination on the grounds of privileged communi-
 25 cation.

26 **(4)(a) Notwithstanding subsection (2) or (3) of this section, the board may order a mental,**
 27 **physical or medical competency examination only using the procedures set forth in section**
 28 **2 of this 2009 Act, and a licensee shall be deemed to have given consent only upon:**

29 **(A) A contested case determination that the examination is authorized under section 2**
 30 **of this 2009 Act; or**

31 **(B) The licensee’s failure to timely request a contested case hearing under section 2 of**
 32 **this 2009 Act.**

33 **(b) Paragraph (a) of this subsection does not apply to an action by the board that is de-**
 34 **scribed in section 2 (5) of this 2009 Act.**

35 [(4)] (5) The board may request any medical organization to assist the board in preparing for
 36 or conducting any medical competency examination that the board may consider appropriate.

37 **SECTION 6.** ORS 678.113 is amended to read:

38 678.113. (1) During the course of an investigation into the performance or conduct of an appli-
 39 cant, certificate holder or licensee, the Oregon State Board of Nursing may order mental health,
 40 physical condition or chemical dependency evaluations of the applicant, certificate holder or
 41 licensee upon reasonable belief that the applicant, certificate holder or licensee is unable to practice
 42 nursing with reasonable skill and safety to patients.

43 (2) When the board has reasonable cause to believe that an applicant, certificate holder or
 44 licensee is or may be unable to practice nursing with reasonable skill and safety to patients, the
 45 board may order a competency examination of the applicant, certificate holder or licensee for the

1 purpose of determining the fitness of the applicant, certificate holder or licensee to practice nursing
 2 with reasonable skill and safety to patients.

3 (3) A licensee or certificate holder by practicing nursing, or an applicant by applying to practice
 4 nursing in Oregon, gives consent to submit to mental health, physical condition or chemical de-
 5 pendency evaluations when ordered by the board and waives any objection on the grounds of privi-
 6 leged communication to the admissibility of information derived from evaluations ordered by the
 7 board.

8 **(4)(a) Notwithstanding subsection (2) or (3) of this section, the board may order a mental**
 9 **health, physical condition or competency examination or evaluation only using the proce-**
 10 **dures set forth in section 2 of this 2009 Act, and a licensee, certificate holder or applicant**
 11 **shall be deemed to have given consent only upon:**

12 **(A) A contested case determination that the examination is authorized under section 2**
 13 **of this 2009 Act; or**

14 **(B) The failure of the licensee, certificate holder or applicant to timely request a con-**
 15 **tested case hearing under section 2 of this 2009 Act.**

16 **(b) Paragraph (a) of this subsection does not apply to an action by the board that is de-**
 17 **scribed in section 2 (5) of this 2009 Act.**

18 ~~[(4)]~~ (5) By rule, the board may require evidence of continuing education in an accredited pro-
 19 gram as a prerequisite for renewal of registered or practical nursing licenses, or both, or may re-
 20 quire continuing education for persons whose license has lapsed for nonpayment of fees, who have
 21 not practiced nursing for five years, or who have their licenses suspended or revoked as a condition
 22 to relicensure.

23 **SECTION 7.** ORS 679.250 is amended to read:

24 679.250. The powers and duties of the Oregon Board of Dentistry are as follows:

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

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

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

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

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

44 (5) To meet for the transaction of other business at the call of the president. A majority of board
 45 members shall constitute a quorum. A majority vote of those present shall be a decision of the entire

1 board. The board's proceedings shall be open to public inspection in all matters affecting public in-
2 terest.

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

10 (7) To make and enforce rules necessary for the procedure of the board, for the conduct of ex-
11 aminations, for regulating the practice of dentistry, and for regulating the services of dental
12 hygienists and dental auxiliary personnel not inconsistent with the provisions of this chapter. As
13 part of such rules, the board may require the procurement of a permit or other certificate. Any
14 permit issued may be subject to periodic renewal. In adopting rules, the board shall take into ac-
15 count all relevant factors germane to an orderly and fair administration of this chapter and of ORS
16 680.010 to 680.205, the practices and materials generally and currently used and accepted by persons
17 licensed to practice dentistry in this state, dental techniques commonly in use, relevant technical
18 reports published in recognized dental journals, the curriculum at accredited dental schools, the
19 desirability of reasonable experimentation in the furtherance of the dental arts, and the desirability
20 of providing the highest standard of dental care to the public consistent with the lowest economic
21 cost.

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

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

44 (10) To adopt and enforce rules regulating administration of general anesthesia and conscious
45 sedation by a dentist or under the supervision of a dentist in the office of the dentist. As part of

1 such rules, the board may require the procurement of a permit which must be periodically renewed.

2 (11) **Subject to section 2 of this 2009 Act**, to order an applicant or licensee to submit to a
 3 physical examination, mental examination or a competency examination when the board has evi-
 4 dence indicating the incapacity of the applicant or licensee to practice safely.

5 **SECTION 8.** ORS 684.100 is amended to read:

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

8 (a) Fraud or misrepresentation.

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

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

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

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

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

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

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

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

28 (C) Gross malpractice or repeated malpractice.

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

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

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

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

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

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

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

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

45 (p) The advertising or holding oneself out to treat diseases or other abnormal conditions of the

1 human body by any secret formula, method, treatment or procedure.

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

3 (r) Gross incompetency or gross negligence.

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

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

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

13 (v) An act or conduct that results in a judgment of wrongdoing by a court of competent juris-
14 diction in any state or a finding of wrongdoing in an administrative proceeding in any state. The
15 act or conduct must be rationally connected to the ability to practice chiropractic or chiropractic
16 assisting.

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

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

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

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

33 (6) Notwithstanding any other provisions of ORS 684.010, 684.040, 684.050, 684.090, 684.100,
34 684.112, 684.130, 684.150 and 684.155, **but subject to section 2 of this 2009 Act**, the board may at
35 any time direct and order a professional competency examination limited to the area of practice out
36 of which a specific complaint has arisen and make an investigation, including the taking of deposi-
37 tions or otherwise in order to fully inform itself with respect to the performance or conduct of a
38 physician licensed under ORS 684.010, 684.040, 684.050, 684.090, 684.100, 684.112, 684.130, 684.150 and
39 684.155.

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

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

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

45 (B) Require the fingerprints and relevant personal history data of the physician for the purpose

1 of requesting a state or nationwide criminal records check under ORS 181.534.

2 (b) Person certified to provide physiotherapy, electrotherapy or hydrotherapy pursuant to ORS
 3 684.155 (1)(c) is or may be unable to provide the therapies with reasonable skill and safety to pa-
 4 tients, the board may:

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

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

9 **(8)(a) Notwithstanding subsection (5), (6) or (7) of this section, the board may order a**
 10 **competency examination under this subsection only using the procedures set forth in section**
 11 **2 of this 2009 Act, and the chiropractic physician for whom an examination is sought shall**
 12 **be deemed to have given consent only upon:**

13 (A) A contested case determination that the examination is authorized under section 2
 14 of this 2009 Act; or

15 (B) The physician’s failure to timely request a contested case hearing under section 2 of
 16 this 2009 Act.

17 (b) Paragraph (a) of this subsection does not apply to an action by the board that is de-
 18 scribed in section 2 (5) of this 2009 Act.

19 [(8)] (9) Refusal by any person to take or appear for a competency examination scheduled by the
 20 board **and authorized to be given under subsection (8) of this section**, or to submit fingerprints
 21 and relevant personal history data as required by the board under subsection (7) of this section,
 22 shall constitute grounds for disciplinary action.

23 [(9)] (10) In disciplining a person as authorized by subsection (1) of this section, the board may
 24 use any or all of the following methods:

25 (a) Suspend judgment.

26 (b) Place the person on probation.

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

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

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

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

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

33 [(10)(a)] (11)(a) Any information that the board obtains pursuant to ORS 684.100, 684.112 and
 34 684.155 (9) is confidential as provided under ORS 676.175.

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

38 **SECTION 9.** ORS 686.260 is amended to read:

39 686.260. (1) Upon the complaint of any resident of this state, or upon its own initiative, the
 40 Oregon State Veterinary Medical Examining Board may investigate any alleged violation of this
 41 chapter.

42 (2) While conducting an investigation, the board may:

43 (a) Take evidence;

44 (b) Take depositions of witnesses, including the deposition of the person who is the subject of
 45 the investigation, in the manner provided by law in civil cases;

1 (c) Compel the appearance of witnesses, including the person who is the subject of the investi-
 2 gation, in the manner provided by law in civil cases;

3 (d) Require answers to interrogatories;

4 (e) Compel the production of books, papers, electronic files, accounts and other documents per-
 5 taining to the investigation;

6 (f) Issue subpoenas;

7 (g) Inspect the premises of a veterinary facility in which any part of a licensee's practice of
 8 veterinary medicine is conducted if the board has evidence of conditions that are deficient or not
 9 in compliance with standards for veterinary medical facilities adopted by rule by the board; and

10 (h) Order an applicant or licensee to undergo a mental examination, a physical examination or
 11 a professional competency examination when the board has evidence indicating the incapacity of the
 12 applicant or licensee to practice veterinary medicine safely.

13 **(3)(a) Notwithstanding subsection (2)(h) of this section, the board may order a mental**
 14 **examination, physical examination or professional competency examination under this sub-**
 15 **section only using the procedures set forth in section 2 of this 2009 Act, and the licensee or**
 16 **applicant for whom the examination is sought shall be deemed to have given consent only**
 17 **upon:**

18 **(A) A contested case determination that the examination is authorized under section 2**
 19 **of this 2009 Act; or**

20 **(B) The failure of the licensee or applicant to timely request a contested case hearing**
 21 **under section 2 of this 2009 Act.**

22 **(b) Paragraph (a) of this subsection does not apply to an action by the board that is de-**
 23 **scribed in section 2 (5) of this 2009 Act.**

24 ~~[(3)]~~ (4) If after *[such]* an investigation **conducted under this section** the board has reason to
 25 believe that any person is subject to prosecution criminally for the violation of this chapter, the
 26 board shall report the case to the appropriate district attorney or to the Attorney General.

27 **SECTION 10.** ORS 688.140 is amended to read:

28 688.140. (1) The Physical Therapist Licensing Board, after notice and hearing as provided in
 29 ORS 688.145, may impose any or all of the following sanctions or take any of the following actions
 30 upon any of the grounds specified in subsection (2) of this section:

31 (a) Refuse to license any applicant.

32 (b) Refuse to renew the license of any physical therapist or physical therapist assistant.

33 (c) Suspend or revoke the license of any physical therapist or physical therapist assistant.

34 (d) Suspend or revoke a temporary permit issued under ORS 688.110.

35 (e) Impose a civil penalty not to exceed \$5,000.

36 (f) Impose probation with authority to limit or restrict a license.

37 (g) Impose conditions, restrictions or limitations on practice.

38 (h) Issue letters of reprimand.

39 (i) Impose any other appropriate sanction, including assessment of the reasonable costs of a
 40 proceeding under ORS 688.145 as a civil penalty. Costs include, but are not limited to, the costs of
 41 investigation, attorney fees, hearing officer costs and the costs of discovery.

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

44 (a) Violates any provision of ORS 688.010 to 688.201, board rules or a written order from the
 45 board.

- 1 (b) Practices or offers to practice beyond the scope of practice of physical therapy.
- 2 (c) Obtains or attempts to obtain or renew a license or temporary permit by fraud or misrepresentation.
3
- 4 (d) Provides substandard care as a physical therapist through a deliberate or negligent act or
5 failure to act, regardless of whether injury to the patient occurs.
- 6 (e) Provides substandard care as a physical therapist assistant by exceeding the authority to
7 perform components of physical therapy interventions selected by the supervising physical therapist
8 or through a deliberate or negligent act or failure to act, regardless of whether injury to the patient
9 occurs.
- 10 (f) Fails as a physical therapist to supervise physical therapist assistants in accordance with
11 board rules.
- 12 (g) Fails as a physical therapist or physical therapist assistant to supervise physical therapist
13 aides in accordance with board rules.
- 14 (h) Subject to the provisions of ORS 670.280, has been convicted of a crime in Oregon or any
15 other state, territory or country. For purposes of this paragraph, conviction includes a verdict of
16 guilty, a plea of guilty or a plea of no contest.
- 17 (i) Uses controlled substances or intoxicating liquors to an extent or in a manner that is illegal,
18 dangerous or injurious to the licensee or others or that impairs the person's ability to safely practice
19 physical therapy.
- 20 (j) Has had an application for licensure refused because of conduct or circumstances that would
21 be grounds for sanctions by the board, or a license revoked or suspended, or other disciplinary
22 action taken by the proper authorities of another state, territory or country.
- 23 (k) Engages in sexual misconduct. For purposes of this paragraph, sexual misconduct includes
24 but is not limited to:
 - 25 (A) Engaging in sexual conduct or soliciting a sexual relationship with a current patient,
26 whether consensual or nonconsensual.
 - 27 (B) Intentionally exposing or viewing a completely or partially disrobed patient in the course
28 of treatment if the exposure or viewing is not related to patient diagnosis or treatment under current
29 practice standards.
 - 30 (L) Directly or indirectly requests, receives, pays or participates in dividing, transferring or assigning
31 an unearned fee or profits by a means of a credit or other valuable consideration such as
32 an unearned commission, discount or gratuity in connection with the furnishing of physical therapy
33 services. This paragraph does not prohibit the members of any regularly and properly organized
34 business entity recognized by law and comprised of physical therapists from dividing fees received
35 for professional services among themselves as they determine.
- 36 (m) Fails to adhere to the standards of ethics of the physical therapy profession established by
37 board rule.
- 38 (n) Obtains or attempts to obtain a fee for physical therapy services by fraud or misrepresentation.
39
- 40 (o) Makes misleading, deceptive or fraudulent representations in the course of providing physical
41 therapy services.
- 42 (p) Fails to report to the board, when the person has direct knowledge of an unprofessional,
43 incompetent or illegal act that reasonably appears to be in violation of ORS 688.010 to 688.201 or
44 any rules of the board.
- 45 (q) Interferes with an investigation or disciplinary proceeding of the board.

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

2 (s) Fails to maintain adequate patient records.

3 (t) Fails to maintain patient confidentiality.

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

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

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

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

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

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

16 (c) Issue a subpoena to compel the attendance of any witness or the production of any doc-
17 umentation relating to a matter under investigation. In addition to the board, the executive director
18 or the executive director's designee may issue a subpoena. When the board, in the course of an in-
19 vestigation, requires the production of patient records for inspection and copying by subpoena, or
20 otherwise, the records shall be produced without regard to whether patient consent has been ob-
21 tained and without regard to any claim of confidentiality or privilege.

22 (d) Take the deposition of a witness, including a physical therapist or physical therapist assist-
23 ant being investigated, in the manner provided by law in civil cases.

24 (e) Take emergency action to suspend a person's license or restrict the person's practice or
25 employment pending proceedings by the board.

26 (f) Report to the appropriate district attorney all cases that, in the judgment of the board,
27 warrant prosecution.

28 (g) Require a person to undergo a mental, physical, chemical dependency or competency evalu-
29 ation at the person's expense when the board has objectively reasonable grounds to believe that the
30 person is or may be unable to practice physical therapy with reasonable skill and safety, with the
31 results being reported to the board. The report shall not be disclosed to the public but may be re-
32 ceived into evidence in a proceeding between the board and the person when the mental, physical,
33 chemical dependency or competency of the person is at issue, notwithstanding any claim of privilege
34 by the person.

35 **(4)(a) Notwithstanding subsection (3)(g) of this section, the board may order a mental,**
36 **physical or competency evaluation under subsection (3)(g) of this section only using the**
37 **procedures set forth in section 2 of this 2009 Act, and the person for whom the evaluation**
38 **is sought shall be deemed to have given consent only upon:**

39 **(A) A contested case determination that the examination is authorized under section 2**
40 **of this 2009 Act; or**

41 **(B) The person's failure to timely request a contested case hearing under section 2 of this**
42 **2009 Act.**

43 **(b) Paragraph (a) of this subsection does not apply to an action by the board that is de-**
44 **scribed in section 2 (5) of this 2009 Act.**

45 [(4)] (5) If the board finds that the information received in a complaint or an investigation does

1 not merit disciplinary action against a person, nondisciplinary actions may ensue. The board may
2 then take the following actions:

3 (a) Dismiss the complaint.

4 (b) Issue a confidential advisory letter to the person that is nondisciplinary and that notifies the
5 physical therapist or physical therapist assistant that certain conduct or practices must be modified
6 or eliminated.

7 [(5)] **(6)** The board may apply for injunctive relief in any court of competent jurisdiction to en-
8 join any person from committing any act in violation of ORS 688.010 to 688.201. Injunction pro-
9 ceedings are in addition to, and not in lieu of, penalties or other sanctions prescribed in ORS 688.010
10 to 688.201.

11
