

House Bill 2787

Sponsored by Representative WITT, Senator JOHNSON

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**.

Modifies conduct of disciplinary proceedings by Oregon State Board of Nursing.
Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to disciplinary actions by the Oregon State Board of Nursing; creating new provisions;
3 amending ORS 678.126 and 678.150; and declaring an emergency.

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 678.010 to**
6 **678.410.**

7 **SECTION 2. (1) If the Oregon State Board of Nursing conducts a contested case under**
8 **ORS 678.111 or other law, the case shall be conducted as follows:**

9 (a) Upon the determination by the board to commence disciplinary proceedings against
10 an individual, the board shall cause a case file to be opened. The file must contain the in-
11 vestigator's report, supporting documentation and a list of the causes at issue in the disci-
12 plinary proceeding.

13 (b) Board members may not conduct, participate in or attend investigatory interviews.

14 (c) The board may not proceed with a disciplinary proceeding unless:

15 (A) Allegations against the individual are supported by evidence documented in the case
16 file; and

17 (B) The board has provided the individual with a list of the causes for discipline at issue
18 in the disciplinary proceeding at least 45 days prior to the hearing.

19 (d) Notwithstanding ORS 676.165 (5) or 676.175 (1), the board shall disclose the investi-
20 gator's report and all supporting documentation in the disciplinary file to the individual to
21 whom the file relates or to the individual's legal counsel at least 45 days prior to the disci-
22 plinary proceeding.

23 (e) In a disciplinary proceeding, the board shall permit the testimony of all witnesses
24 appearing on behalf of the individual against whom the board commenced the disciplinary
25 proceeding.

26 (f) The board may not amend or alter the findings of fact of an administrative law judge
27 issued in a disciplinary proceeding, unless the board first gives written notice to the licensee
28 of the board's intention to reopen the findings of fact and holds a contested hearing under
29 ORS chapter 183 on the issue.

30 (g)(A) Notwithstanding ORS 678.111 (1), the board may impose only a civil penalty upon
31 a licensee for working outside the scope of practice authorized by the licensee's license.

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) Subparagraph (A) of this paragraph does not apply if the licensee has previously been
2 disciplined two or more times for working outside the authorized scope of practice.

3 (h) Notwithstanding ORS 670.280, the board may revoke the license of a licensee disci-
4 plined for a cause unrelated to patient care if the cause for discipline is based on conduct
5 that has resulted in a felony conviction entered against the licensee.

6 (i) The board may not revoke the license of a licensee the board finds has failed to meet
7 the standard of care if a physician licensed by the Oregon Medical Board testifies at the
8 disciplinary proceeding that, under the circumstances presented, the licensee met and
9 maintained the appropriate standard of care. The physician may not be excluded from the
10 contested case hearing. The board or administrative law judge shall permit the physician to
11 attend the hearing and listen to the testimony of witnesses as an expert witness.

12 (j) If the board takes formal disciplinary action against a licensee, the board shall im-
13 mediately notify the licensee of the disciplinary action taken by certified mail. The discipli-
14 nary sanction does not take effect until:

15 (A) 30 days from the date the licensee signs the notice acknowledging receipt; or

16 (B) If the notice is undeliverable due to the licensee's refusal or failure to accept delivery
17 or the licensee's failure to notify the board of the licensee's current address, the date the
18 notice is returned to the board.

19 (k) The board may not release to any person information relating to the disciplinary
20 action until the board has received:

21 (A) The return receipt acknowledging that the licensee has received the notice; or

22 (B) If the notice is undeliverable due to the licensee's refusal or failure to accept delivery
23 or the licensee's failure to notify the board of the licensee's current address, the return re-
24 ceipt verifying that the notice could not be delivered to the licensee.

25 (L) The board may not assess against a licensee any attorney fees, investigation costs,
26 hearing costs or any other costs associated with an investigation or disciplinary proceeding.

27 (m) If a licensee appeals the board's determination to impose discipline:

28 (A) The court may not assess a prevailing party fee or the board's court costs or attor-
29 ney fees against the licensee.

30 (B) The board may not assess court costs or attorney fees against the licensee.

31 (2) Except as provided in this section, the board shall conduct case hearings in accord-
32 ance with ORS chapter 183.

33 **SECTION 3.** ORS 678.126 is amended to read:

34 678.126. (1) Any information that the Oregon State Board of Nursing obtains pursuant to ORS
35 678.021, 678.111, 678.113, 678.123, 678.135 or 678.442 or section 2 of this 2009 Act is confidential
36 as provided under ORS 676.175.

37 (2) Upon receipt of a complaint under ORS 678.010 to 678.410 or 678.442, the Oregon State Board
38 of Nursing shall conduct an investigation as described under ORS 676.165 and section 2 of this
39 2009 Act.

40 (3) Any person, facility, licensee or association that reports or provides information to the board
41 under ORS 678.021, 678.111, 678.113, 678.123, 678.135 or 678.442 or section 2 of this 2009 Act in
42 good faith shall not be subject to an action for civil damages as a result thereof.

43 **SECTION 4.** ORS 678.150 is amended to read:

44 678.150. (1) The Oregon State Board of Nursing shall elect annually from its number a president,
45 a president-elect and a secretary, each of whom shall serve until a successor is elected and qualified.

1 The board shall meet on the call of the president or as the board may require. Special meetings of
 2 the board may be called by the secretary upon the request of any three members. Five members
 3 shall constitute a quorum.

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

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

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

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

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

19 (7) The board shall:

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

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

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

24 (d) Accredite such nursing education programs as meet the requirements of ORS 678.010 to
 25 678.445 and of the board.

26 (e) Deny or withdraw accreditation from nursing education programs for failure to meet pre-
 27 scribed standards.

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

30 (g) Issue subpoenas for any records relevant to a board investigation, including patient and
 31 other medical records, personnel records applicable to nurses and nursing assistants, records of
 32 schools of nursing and nursing assistant training records and any other relevant records; issue
 33 subpoenas to persons for personal interviews relating to board investigations; compel the attendance
 34 of witnesses; and administer oaths or affirmations to persons giving testimony during an investi-
 35 gation or at hearings. In any proceeding under this subsection, when a subpoena is issued to an
 36 applicant, certificate holder or licensee of the board, a claim of nurse-patient privilege under ORS
 37 40.240 or of psychotherapist-patient privilege under ORS 40.230 is not grounds for quashing the
 38 subpoena or for refusing to produce the material that is subject to the subpoena.

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

40 (i) Prescribe standards for the delegation of special tasks of patient care to nursing assistants
 41 and for the supervision of nursing assistants. The standards must include rules governing the dele-
 42 gation of administration of noninjectable medication by nursing assistants and must include rules
 43 prescribing the types of noninjectable medication that can be administered by nursing assistants,
 44 and the circumstances, if any, and level of supervision under which nursing assistants can adminis-
 45 ter noninjectable medication. In formulating the rules governing the administration of noninjectable

1 medication by nursing assistants, the board shall consult with nurses, physicians, gerontologists and
 2 pharmacologists. Notwithstanding any other provision of this paragraph, however, determination of
 3 the appropriateness of the delegation of a special task of patient care shall remain with the regis-
 4 tered nurse issuing the order.

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

7 **(k) Develop decision guidelines to be used in determining the appropriate discipline to be**
 8 **imposed on a licensee. In addition to any other circumstances or characteristics the board**
 9 **determines should be considered in making the determination, the decision guidelines shall**
 10 **include the following:**

11 **(A) The licensee’s prior disciplinary history.**

12 **(B) The availability of other medical care in the immediate area in which the licensee**
 13 **practices.**

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

16 (9) For local correctional facilities, lockups and juvenile detention facilities, as defined in ORS
 17 169.005, youth correction facilities as defined in ORS 420.005, for facilities operated by a public
 18 agency for detoxification of persons who use alcohol excessively, for homes or facilities licensed
 19 under ORS 443.705 to 443.825 for adult foster care, and for facilities licensed under ORS 443.400 to
 20 443.455 for residential care, training or treatment, the **Oregon State Board of Nursing** shall adopt
 21 rules pertaining to the provision of nursing care, and to the various tasks relating to the adminis-
 22 tration of noninjectable medication including administration of controlled substances. The rules must
 23 provide for delegation of nursing care and tasks relating to the administration of medication to
 24 other than licensed nursing personnel by a physician licensed by the Oregon Medical Board or by
 25 a registered nurse, designated by the facility. Such delegation must occur under the procedural
 26 guidance, initial direction and periodic inspection and evaluation of the physician or registered
 27 nurse. However, the provision of nursing care may be delegated only by a registered nurse.

28 (10) The board may require applicants, licensees and certificate holders under ORS 678.010 to
 29 678.445 to provide to the board data concerning the individual’s nursing employment and education.

30 (11) For the purpose of requesting a state or nationwide criminal records check under ORS
 31 181.534, the board may require the fingerprints of a person who is:

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

35 (12) Pursuant to ORS chapter 183, the board shall adopt rules necessary to carry out the pro-
 36 visions of ORS 678.010 to 678.445.

37 **SECTION 5. Section 2 of this 2009 Act and the amendments to ORS 678.126 and 678.150**
 38 **by sections 3 and 4 of this 2009 Act apply to disciplinary investigations or proceedings com-**
 39 **menced on or after the effective date of this 2009 Act.**

40 **SECTION 6. 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.**