

House Bill 3175

Sponsored by Representative GILLIAM; Representatives RICHARDSON, THOMPSON, WHISNANT (at the request of Brenda Ross)

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**.

Requires Oregon Medical Board to reveal certain information about complaints against licensees of board when requested to do so by any person. Requires findings of investigation of complaint to be reported to board within 90 days of receipt of complaint by board. Allows one 30-day extension of time to report to board.

Removes requirement that certain health professional regulatory boards maintaining negligence claim websites delete reported claims of negligence filed against licensees if no other claims are filed within four years.

A BILL FOR AN ACT

1
2 Relating to health professional regulatory boards; amending ORS 677.320 and 742.400.

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

4 **SECTION 1.** ORS 677.320 is amended to read:

5 677.320. (1) Upon the complaint of any citizen of this state, or upon its own initiative, the
6 Oregon Medical Board may investigate any alleged violation of this chapter. If, after the investi-
7 gation, the board has reason to believe that any person is subject to prosecution criminally for the
8 violation of this chapter, it shall lay the facts before the proper district attorney.

9 (2) In the conduct of investigations, the board or its designated representative may:

10 (a) Take evidence;

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

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

13 (d) Require answers to interrogatories; and

14 (e) Compel the production of books, papers, accounts, documents and testimony pertaining to the
15 matter under investigation.

16 (3) In exercising its authority under subsection (2) of this section, the board may issue subpoenas
17 over the signature of the executive director and the seal of the board in the name of the State of
18 Oregon.

19 (4) In any proceeding under this section where the subpoena is addressed to a licensee of this
20 board, it shall not be a defense that the material that is subject to the subpoena is protected under
21 a patient and physician privilege.

22 (5) If a licensee who is the subject of an investigation or complaint is to appear before members
23 of the board investigating the complaint, the board shall provide the licensee with a current sum-
24 mary of the complaint or the matter being investigated not less than five days prior to the date that
25 the licensee is to appear. At the time the summary of the complaint or the matter being investi-
26 gated is provided, the board shall provide to the licensee a current summary of documents or alleged
27 facts that the board has acquired as a result of the investigation. The name of the complainant or
28 other information that reasonably may be used to identify the complainant may be withheld from the

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 licensee.

2 (6) A licensee who is the subject of an investigation and any person authorized to act on behalf
 3 of the licensee shall not knowingly contact the complainant until the licensee has requested a con-
 4 tested case hearing and the board has authorized the taking of the complainant’s deposition pursu-
 5 ant to ORS 183.425.

6 (7) Except in an investigation or proceeding conducted by the board or another public entity,
 7 or in an action, suit or proceeding where a public entity is a party, a licensee shall not be ques-
 8 tioned or examined regarding any communication with the board made in an appearance before the
 9 board as part of an investigation. This section shall not prohibit examination or questioning of a
 10 licensee regarding records dealing with a patient’s care and treatment or affect the admissibility of
 11 those records. As used in this section, “public entity” has the meaning given that term in ORS
 12 676.177.

13 **(8) Notwithstanding ORS 676.175, when requested by any person, the board shall report**
 14 **the existence and status of all complaints the board has received concerning a licensee of the**
 15 **board. The board may reveal only the:**

- 16 (a) Existence of the complaint;
- 17 (b) Date the complaint was received by the board;
- 18 (c) Nature of the complaint; and
- 19 (d) Status, or resolution if one has been reached, of the complaint.

20 **(9) Notwithstanding ORS 676.165 (4), the person investigating a complaint shall report to**
 21 **the board as required by ORS 676.165 not later than 90 days after the board receives the**
 22 **complaint. The board may extend the time for making the report by up to 30 days for just**
 23 **cause. The board may not grant more than one extension of time.**

24 **SECTION 2.** ORS 742.400 is amended to read:

25 742.400. (1) As used in this section:

26 (a) “Claim” means a written demand for payment from or on behalf of a covered practitioner for
 27 an injury alleged to have been caused by professional negligence that is made in a complaint filed
 28 with a court of appropriate jurisdiction.

29 (b) “Covered practitioner” means a physician, podiatric physician and surgeon, physician as-
 30 sistant, nurse practitioner, optometrist, dentist, dental hygienist or naturopath.

31 (c) “Disposition of a claim” means:

- 32 (A) A judgment or award against the covered practitioner by a court, a jury or an arbitrator;
- 33 (B) A withdrawal or dismissal of the claim; or
- 34 (C) A settlement of the claim.

35 (d) “Reporter” means:

- 36 (A) A primary insurer;
- 37 (B) A public body required to defend, save harmless and indemnify an officer, employee or agent
 38 of the public body under ORS 30.260 to 30.300;

39 (C) An entity that self-insures or indemnifies for claims alleging professional negligence on the
 40 part of a covered practitioner; or

41 (D) A health maintenance organization as defined in ORS 750.005.

42 (2) Within 30 days after receiving notice of a claim, a reporter shall report the claim to the
 43 appropriate board, as follows:

44 (a) The Oregon Medical Board if the covered practitioner is a physician, podiatric physician and
 45 surgeon or physician assistant;

- 1 (b) The Oregon State Board of Nursing if the covered practitioner is a nurse practitioner;
- 2 (c) The Oregon Board of Optometry if the covered practitioner is an optometrist;
- 3 (d) The Oregon Board of Dentistry if the covered practitioner is a dentist or dental hygienist;

4 or

- 5 (e) The Board of Naturopathic Examiners if the covered practitioner is a naturopath.

6 (3) The report required under subsection (2) of this section shall include:

- 7 (a) The name of the covered practitioner;
- 8 (b) The name of the person that filed the claim;
- 9 (c) The date on which the claim was filed; and

10 (d) The reason or reasons for the claim, except that the report may not disclose any data that
11 is privileged under ORS 41.675.

12 (4) Within 30 days after the date of an action taken in disposition of a claim, a reporter shall
13 notify the appropriate board identified in subsection (2) of this section of the disposition.

14 (5)(a) A board that receives a report of a claim under this section shall publicly post the report
15 on the board's website if the claim results in a judicial finding or admission of liability or a money
16 judgment, award or settlement that involves a payment to the claimant. The board may not publicly
17 post information about claims that did not result in a judicial finding or admission of liability or a
18 money judgment, award or settlement that involves a payment to the claimant but shall make the
19 information available to the public upon request. *[The board shall remove from the board's website*
20 *any record based on a reported claim against a covered practitioner if the board does not receive an-*
21 *other report of a claim against the practitioner within four years after the date reported under sub-*
22 *section (3)(c) of this section.]*

23 (b) If a board discloses information about a claim that is the subject of a report received under
24 this section, the board shall indicate in the disclosure whether the claim resulted in a judicial
25 finding or an admission of liability or a money judgment, an award or a settlement that involves a
26 payment to the claimant. A board may not publicly disclose or publish any allegations or factual
27 assertions included in the claim unless the complaint resulted in a judicial finding or an admission
28 of liability or a money judgment, an award or a settlement that involves a payment to the claimant.

29 (c) For purposes of this subsection, "judicial finding" means a finding of liability by a court, a
30 jury or an arbitrator.

31 (6) A board that receives a report under this section shall provide copies of the report to each
32 health care facility licensed under ORS 441.015 to 441.087, 441.525 to 441.595, 441.815, 441.820,
33 441.990, 442.342, 442.344 and 442.400 to 442.463 that employs or grants staff privileges to the covered
34 practitioner.

35 (7) A person that reports in good faith concerning any matter required to be reported under this
36 section is immune from civil liability by reason of making the report.

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