

Enrolled
Senate Bill 1046

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CHAPTER

AN ACT

Relating to prescriptive authority for licensed psychologists; creating new provisions; amending ORS 675.085 and 677.265; and declaring an emergency.

Whereas the Legislative Assembly finds that it is in the public's best interest to provide greater access to the full range of mental health treatments; and

Whereas doctoral clinical psychologists desire to expand their scope of practice to provide a greater range of mental health treatment options; and

Whereas the Legislative Assembly finds that doctoral clinical psychologists with appropriate training should be permitted to prescribe drugs to patients; now, therefore,

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

SECTION 1. As used in sections 1 to 6 of this 2010 Act:

(1) "Collaboration" means a process that involves two or more persons working together, each contributing that person's respective area of expertise to provide more comprehensive care than one person alone can provide.

(2) "Drug" means an article, other than food:

(a) Intended for use in the diagnosis, cure, mitigation, treatment or prevention of mental and emotional disorders; and

(b) Intended to affect a structure or function of the human body.

(3) "Licensed psychologist" means a person licensed to practice psychology under the provisions of ORS 675.010 to 675.150.

(4) "Prescribe" has the meaning given that term in ORS 677.010.

(5) "Prescribing psychologist" means a licensed psychologist who has been issued a certificate of prescriptive authority under section 3 of this 2010 Act.

(6) "Prescribing psychologist formulary" means the list of drugs, and the protocols for use of the drugs, adopted by the Oregon Medical Board under section 3 of this 2010 Act.

SECTION 2. (1) There is established within the Oregon Medical Board a Committee on Prescribing Psychologists. The term of office for each member is three years, but each member serves at the pleasure of the appointing authority. Before the expiration of the term of a member, the appointing authority shall appoint a successor whose term begins on July 1 next following. A member is eligible for reappointment. If there is a vacancy for any cause, the appointing authority shall make an appointment to become immediately effective for the unexpired term.

(2) The committee consists of seven members appointed as follows:

- (a) The State Board of Psychologist Examiners shall appoint four members as follows:
- (A) Three licensed psychologists; and
 - (B) One licensed psychologist who is a member of the State Board of Psychologist Examiners, who shall serve as chair of the committee.
- (b) The Oregon Medical Board shall appoint three licensed physicians, one of whom is a psychiatrist.
- (3) One of the members of the committee must have expertise in the treatment of children.
- (4) The committee shall:
- (a) Make recommendations to the Oregon Medical Board on educational requirements, clinical training requirements, standards, examinations and continuing education for prescribing psychologists;
 - (b) Review and make recommendations to the Oregon Medical Board and the State Board of Psychologist Examiners on applications for certificates of prescriptive authority;
 - (c) Make recommendations to the Oregon Medical Board and the State Board of Psychologist Examiners on the prescribing psychologist formulary and annual formulary revisions;
 - (d) Make recommendations to the Oregon Medical Board on the disposition of complaints about prescribing psychologists; and
 - (e) Report to the Oregon Medical Board and the State Board of Psychologist Examiners regarding the use of prescriptive authority by prescribing psychologists.
- (5) A majority of the members of the committee constitutes a quorum for the transaction of business.
- (6) Official action by the committee requires the approval of a majority of the members of the committee.
- (7) The committee may seek the assistance of a neutral third party in resolving disagreements among the members and facilitating the collaborative process.
- (8) The committee shall meet at times and places specified by the call of the chairperson or a majority of the members of the committee.
- (9) The committee may adopt rules necessary for the operation of the committee.
- (10) The Oregon Medical Board shall provide staff support to the committee.
- (11) Members of the committee are not entitled to compensation, but may be reimbursed from funds available to the Oregon Medical Board for actual and necessary travel and other expenses incurred by them in the performance of their official duties in the manner and amount provided in ORS 292.495.

SECTION 3. (1) Pursuant to the procedure set forth in section 4 of this 2010 Act, the Oregon Medical Board may issue a certificate of prescriptive authority to a licensed psychologist that authorizes the psychologist to prescribe drugs that are listed in the prescribing psychologist formulary established under this section.

(2) A licensed psychologist who has a doctorate degree may apply to the board for a certificate of prescriptive authority if the psychologist:

(a)(A) Has completed an educational program approved by the board after the board has taken into account the recommendations of the Committee on Prescribing Psychologists provided under section 2 of this 2010 Act; or

(B) Has completed the United States Department of Defense Psychopharmacology Demonstration Project or a similar program developed and operated by any branch of the Armed Forces of the United States;

(b) Has completed a clinical training program approved by the board after the board has taken into account the recommendations of the Committee on Prescribing Psychologists provided under section 2 of this 2010 Act;

(c) Has passed a national certification examination as specified by the board by rule; and

(d) Pays fees required by the board by rule.

(3) A certificate of prescriptive authority issued under this section expires every two years. With the concurrence of the State Board of Psychologist Examiners, the Oregon Medical Board shall adopt rules setting forth the requirements and fee for renewal of the certificate.

(4) Taking into account the recommendations of the Committee on Prescribing Psychologists made under section 2 of this 2010 Act, and with the concurrence of the State Board of Psychologist Examiners, the Oregon Medical Board shall adopt rules:

(a) Setting educational requirements, clinical training requirements, standards, examinations and continuing education requirements for prescribing psychologists; and

(b) Establishing the prescribing psychologist formulary and annual formulary revisions.

SECTION 4. (1) No later than 30 days after the Oregon Medical Board receives an application for a certificate of prescriptive authority under section 3 of this 2010 Act, the board shall forward the application to the Committee on Prescribing Psychologists established in section 2 of this 2010 Act.

(2) No later than 90 days after the Oregon Medical Board forwards the application to the committee, the committee shall review the application and recommend in writing to the Oregon Medical Board and the State Board of Psychologist Examiners the approval or denial of the application.

(3) No later than 60 days after the committee sends its recommendation on the application to the Oregon Medical Board and the State Board of Psychologist Examiners, the Oregon Medical Board and the State Board of Psychologist Examiners shall accept or reject the recommendation. The State Board of Psychologist Examiners shall notify the Oregon Medical Board of its decision.

(4)(a) If the committee recommends approval of the application and the Oregon Medical Board and the State Board of Psychologist Examiners accept the recommendation, the Oregon Medical Board shall issue the certificate of prescriptive authority no later than 60 days after the Oregon Medical Board and the State Board of Psychologist Examiners accept the recommendation.

(b) If the Oregon Medical Board refuses to issue a certificate of prescriptive authority based on the recommendation of the committee or based on the rejection of the committee's recommendation to approve the application by the Oregon Medical Board or the State Board of Psychologist Examiners, the applicant may request a contested case hearing under ORS chapter 183.

(c) If one board accepts the committee's recommendation to approve the application and the other board rejects the committee's recommendation to approve the application, the applicant may request a contested case hearing under paragraph (b) of this subsection or the applicant may request that the boards mediate their differences in accordance with ORS 183.502.

SECTION 5. (1)(a) In the manner prescribed by ORS chapter 183 for contested cases, the Oregon Medical Board may deny, suspend, limit or revoke a certificate of prescriptive authority upon proof of a prescribing psychologist's inappropriate use of prescriptive authority.

(b) When the board receives a complaint about a prescribing psychologist, the board shall notify the State Board of Psychologist Examiners and forward the complaint to the Committee on Prescribing Psychologists established in section 2 of this 2010 Act for a recommendation on disciplinary action. The Oregon Medical Board may accept or reject the recommendation of the committee. The Oregon Medical Board shall notify the State Board of Psychologist Examiners of its decision.

(2) Except as provided in subsection (1) of this section, the Oregon Medical Board may not take disciplinary action against a prescribing psychologist.

(3) Disciplinary action by the Oregon Medical Board under subsection (1) of this section is grounds for discipline of the prescribing psychologist by the State Board of Psychologist Examiners under ORS 675.070 and 675.085.

SECTION 6. (1) The Oregon Medical Board, with the concurrence of the State Board of Psychologist Examiners, shall adopt rules requiring a prescribing psychologist to maintain an ongoing collaboration with the health care professional who oversees a patient's medical care to ensure that:

- (a) Necessary medical examinations are conducted;
 - (b) The prescribed drug is appropriate for the patient's medical condition; and
 - (c) The prescribing psychologist and the health care professional discuss, in a timely manner, any significant changes in the patient's medical or psychological condition.
- (2) The prescribing psychologist and the health care professional shall each document the collaboration under subsection (1) of this section in the clinical records of the patient.

(3) A health care professional who collaborates with a prescribing psychologist as required by rules adopted under this section is not liable for any injury resulting from the care provided by the prescribing psychologist that was the subject of the collaboration, unless the injury results from the gross negligence or reckless, wanton or intentional misconduct of the health care professional.

SECTION 7. ORS 675.085 is amended to read:

675.085. (1) Upon receipt of a complaint under ORS 675.010 to 675.150, the State Board of Psychologist Examiners shall conduct an investigation as described under ORS 676.165.

(2) If the board's investigation reveals that a psychologist who has a certificate of prescriptive authority issued under section 3 of this 2010 Act has improperly used the psychologist's prescriptive authority, the board shall notify the Oregon Medical Board and the Committee on Prescribing Psychologists established in section 2 of this 2010 Act. The State Board of Psychologist Examiners may also impose disciplinary action as permitted under ORS 675.070.

[2)] (3) Where the board proposes to refuse to issue a license or to impose any disciplinary action under ORS 675.070, opportunity for hearing shall be accorded as provided in ORS chapter 183. The board shall render its decision within 30 days after the hearing.

[3)] (4) Adoption of rules, conduct of hearings, issuance of orders and judicial review of rules and orders shall be as provided in ORS chapter 183.

SECTION 8. ORS 677.265 is amended to read:

677.265. In addition to any other powers granted by this chapter, the Oregon Medical Board may:

(1) Adopt necessary and proper rules for administration of this chapter including but not limited to:

(a) Establishing fees and charges to carry out its legal responsibilities, subject to prior approval by the Oregon Department of Administrative Services and a report to the Emergency Board prior to adopting the fees and charges. The fees and charges shall be within the budget authorized by the Legislative Assembly as that budget may be modified by the Emergency Board. The fees and charges established under this section may not exceed the cost of administering the program or the purpose for which the fee or charge is established, as authorized by the Legislative Assembly for the Oregon Medical Board's budget, or as modified by the Emergency Board or future sessions of the Legislative Assembly.

(b) Establishing standards and tests to determine the moral, intellectual, educational, scientific, technical and professional qualifications required of applicants for licenses under this chapter.

(c) Enforcing the provisions of this chapter and exercising general supervision over the practice of medicine and podiatry within this state. In determining whether to discipline a licensee for a standard of care violation, the Oregon Medical Board shall determine whether the licensee used that degree of care, skill and diligence that is used by ordinarily careful physicians or podiatric physicians and surgeons in the same or similar circumstances in the community of the physician or podiatric physician and surgeon or a similar community.

(2) Issue, deny, suspend and revoke licenses and limited licenses, assess costs of proceedings and fines and place licensees on probation as provided in this chapter.

(3) Issue, deny, suspend, limit and revoke certificates of prescriptive authority for licensed psychologists as provided in sections 3 and 5 of this 2010 Act.

(4) With the concurrence of the State Board of Psychologist Examiners, adopt rules for administering the requirements of sections 3, 4, 5 and 6 of this 2010 Act relating to prescribing psychologists.

[(3)] **(5)** Use the gratuitous services and facilities of private organizations to receive the assistance and recommendations of the organizations in administering this chapter.

[(4)] **(6)** Make its personnel and facilities available to other regulatory agencies of this state, or other bodies interested in the development and improvement of the practice of medicine or podiatry in this state, upon terms and conditions for reimbursement as are agreed to by the Oregon Medical Board and the other agency or body.

[(5)] **(7)** Appoint examiners, who need not be members of the Oregon Medical Board, and employ or contract with the American Public Health Association or the National Board of Medical Examiners or other organizations, agencies and persons to prepare examination questions and score examination papers.

[(6)] **(8)** Determine the schools, colleges, universities, institutions and training acceptable in connection with licensing under this chapter. All residency, internship and other training programs carried on in this state by any hospital, institution or medical facility shall be subject to approval by the Oregon Medical Board. The board shall accept the approval by the American Osteopathic Association or the American Medical Association in lieu of approval by the board.

[(7)] **(9)** Prescribe the time, place, method, manner, scope and subjects of examinations under this chapter.

[(8)] **(10)** Prescribe all forms that it considers appropriate for the purposes of this chapter, and require the submission of photographs and relevant personal history data by applicants for licensure under this chapter.

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

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

[(10)] **(12)** Administer oaths, issue notices and subpoenas in the name of the board, enforce subpoenas in the manner authorized by ORS 183.440, hold hearings and perform such other acts as are reasonably necessary to carry out its duties under this chapter.

SECTION 9. (1) There is created the Task Force on Prescribing Psychologists, consisting of six members as follows:

(a) Three licensed physicians, at least one of whom must be a psychiatrist, appointed by the Oregon Medical Board; and

(b) Three licensed psychologists, at least one of whom must have a doctorate in clinical psychology, appointed by the State Board of Psychologist Examiners.

(2) The task force shall:

(a) Develop recommendations on the educational requirements, curriculum, clinical training and standards, including standards for prescribing drugs to special populations, that should be required to grant clinical psychologists the authority to prescribe psychotropic drugs within a clinical psychology practice; and

(b) Report its recommendations to the Seventy-sixth Legislative Assembly in the manner provided in ORS 192.245 no later than March 1, 2011.

(3) A majority of the members of the task force constitutes a quorum for the transaction of business.

(4) Official action by the task force requires the approval of a majority of the members of the task force.

(5) If there is a vacancy for any cause, the appointing authority shall make an appointment to become immediately effective.

(6) The task force shall meet at times and places specified by a majority of the members of the task force.

(7) The task force may adopt rules necessary for the operation of the task force.

(8) The Oregon Medical Board and the State Board of Psychologist Examiners shall provide staff support to the task force.

(9) Members of the task force are not entitled to compensation or reimbursement of expenses and serve as volunteers on the task force.

(10) The Oregon Medical Board and the State Board of Psychologist Examiners may accept gifts, grants or contributions from any public or private source for the purpose of carrying out this section.

SECTION 10. Section 9 of this 2010 Act is repealed on June 30, 2012.

SECTION 11. Notwithstanding the term of office specified by section 2 of this 2010 Act, the members first appointed to the Committee on Prescribing Psychologists shall determine by lot at the first meeting of the committee the initial terms of office for committee members as follows:

(1) Two shall serve for terms ending June 30, 2011.

(2) Two shall serve for terms ending June 30, 2012.

(3) Three shall serve for terms ending June 30, 2013.

SECTION 12. Sections 3, 4, 5 and 6 of this 2010 Act and the amendments to ORS 675.085 and 677.265 by sections 7 and 8 of this 2010 Act become operative on July 1, 2011.

SECTION 13. The Oregon Medical Board may take any action before the operative date specified in section 12 of this 2010 Act that is necessary for the board to exercise, on and after the operative date specified in section 12 of this 2010 Act, all of the duties, functions and powers conferred on the board by sections 3, 4, 5 and 6 of this 2010 Act and the amendments to ORS 675.085 and 677.265 by sections 7 and 8 of this 2010 Act.

SECTION 14. This 2010 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2010 Act takes effect on its passage.

Passed by Senate February 22, 2010

Received by Governor:

.....M.,....., 2010

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Secretary of Senate

Approved:

.....M.,....., 2010

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President of Senate

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Governor

Passed by House February 24, 2010

Filed in Office of Secretary of State:

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Speaker of House

.....M.,....., 2010

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Secretary of State