

House Bill 3523

Sponsored by Representatives GREENLICK, HOYLE, KENNEMER; Representatives BARNHART, BENTZ, BOONE, BREWER, BUCKLEY, DEMBROW, DOHERTY, ESQUIVEL, GILLIAM, HUFFMAN, JENSON, JOHNSON, KOTEK, KRIEGER, MCLANE, SCHAUFLE, SHEEHAN, G SMITH, SPRENGER, THATCHER, WAND, WHISNANT, WINGARD, Senator NELSON

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**.

Authorizes Oregon Medical Board to issue certificates of prescriptive authority to certain licensed psychologists who meet specified requirements.

Establishes Committee on Prescribing Psychologists within Oregon Medical Board to make recommendations to Oregon Medical Board and State Board of Psychologist Examiners on prescribing psychologists.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to prescribing psychologists; creating new provisions; amending ORS 675.085 and 677.265;
3 and declaring an emergency.

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

5 **SECTION 1. As used in sections 1 to 7 of this 2011 Act:**

6 (1) **“Certificate of prescriptive authority” means a conditional certificate of prescriptive**
7 **authority or a full certificate of prescriptive authority issued under section 3 of this 2011**
8 **Act.**

9 (2) **“Collaboration” means a process that involves two or more persons working together,**
10 **each contributing that person’s respective area of expertise to provide more comprehensive**
11 **care than one person alone can provide.**

12 (3) **“Drug” means an article, other than food:**

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

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

16 (4) **“Licensed psychologist” means a person licensed to practice psychology under the**
17 **provisions of ORS 675.010 to 675.150.**

18 (5) **“Prescribe” has the meaning given that term in ORS 677.010.**

19 (6) **“Prescribing psychologist” means a licensed psychologist who has been issued a cer-**
20 **tificate of prescriptive authority under section 3 of this 2011 Act.**

21 (7) **“Prescribing psychologist formulary” means the list of drugs, and the protocols for**
22 **use of the drugs, adopted by the Oregon Medical Board by rule pursuant to ORS 677.265.**

23 **SECTION 2. (1) There is established within the Oregon Medical Board a Committee on**
24 **Prescribing Psychologists. The committee consists of seven members appointed as follows:**

25 (a) **The State Board of Psychologist Examiners shall appoint four licensed psychologists,**
26 **one of whom is a member of the State Board of Psychologist Examiners.**

27 (b) **The Oregon Medical Board shall appoint three licensed physicians, at least one of**

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 whom is a psychiatrist.

2 (2) The term of office for each member is three years, but each member serves at the
 3 pleasure of the appointing authority. Before the expiration of the term of a member, the
 4 appointing authority shall appoint a successor whose term begins on July 1 next following.
 5 A member is eligible for reappointment. If there is a vacancy for any cause, the appointing
 6 authority shall make an appointment to become immediately effective for the unexpired
 7 term.

8 (3) One of the members of the committee must have expertise in the treatment of chil-
 9 dren.

10 (4) The members of the committee shall elect one of the licensed psychologists appointed
 11 under subsection (1)(a) of this section as the chairperson of the committee.

12 (5) The committee shall:

13 (a) Review and make recommendations to the Oregon Medical Board and the State Board
 14 of Psychologist Examiners on clinical training programs proposed by applicants seeking a
 15 conditional certificate of prescriptive authority;

16 (b) Review and make recommendations to the Oregon Medical Board and the State Board
 17 of Psychologist Examiners on applications submitted for certificates of prescriptive author-
 18 ity;

19 (c) Develop and make recommendations to the Oregon Medical Board and the State
 20 Board of Psychologist Examiners regarding the prescribing psychologist formulary and an-
 21 nual revisions to the prescribing psychologist formulary;

22 (d) Develop and make recommendations to the Oregon Medical Board and the State
 23 Board of Psychologist Examiners regarding standards, examinations and continuing educa-
 24 tion for prescribing psychologists; and

25 (e) Report to the Oregon Medical Board and the State Board of Psychologist Examiners
 26 regarding the use of prescriptive authority by prescribing psychologists.

27 (6) A majority of the members of the committee constitutes a quorum for the transaction
 28 of business.

29 (7) Official action by the committee requires the approval of a majority of the members
 30 of the committee.

31 (8) The committee may seek the assistance of a neutral third party in resolving disa-
 32 greements among the committee members and facilitating the collaborative process.

33 (9) The committee shall meet at times and places specified by the call of the chairperson
 34 or a majority of the members of the committee.

35 (10) The committee may adopt rules necessary for the operation of the committee.

36 (11) The Oregon Medical Board shall provide staff support to the committee.

37 (12) Members of the committee are not entitled to compensation, but may be reimbursed
 38 from funds available to the Oregon Medical Board for actual and necessary travel and other
 39 expenses incurred by committee members in the performance of their official duties in the
 40 manner and amount provided in ORS 292.495.

41 **SECTION 3.** (1) Pursuant to the procedure set forth in section 5 of this 2011 Act, the
 42 Oregon Medical Board may issue a certificate of prescriptive authority to a licensed psy-
 43 chologist that authorizes the psychologist to prescribe drugs that are listed in the prescrib-
 44 ing psychologist formulary.

45 (2)(a) A licensed psychologist may apply to the Oregon Medical Board for a conditional

1 certificate of prescriptive authority if the psychologist:

2 (A)(i) Has a master's degree in clinical psychopharmacology, including training in phys-
 3 ical assessment, pathophysiology, psychopharmacology and clinical management, from an
 4 institution accredited by a regional accreditation organization recognized by the United
 5 States Department of Education; or

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

9 (B) Has proposed a clinical training program that has been reviewed by the Committee
 10 on Prescribing Psychologists and forwarded to the Oregon Medical Board and the State
 11 Board of Psychologist Examiners with the committee's recommendation on the clinical
 12 training program under section 4 of this 2011 Act; and

13 (C) Pays the fees required by the Oregon Medical Board by rule.

14 (b) A prescribing psychologist who holds a conditional certificate of prescriptive authority
 15 may prescribe a drug only if a physician licensed under ORS chapter 677 has specifically ap-
 16 proved the prescription in writing, in accordance with rules adopted under section 7 of this
 17 2011 Act.

18 (3) A licensed psychologist may apply to the Oregon Medical Board for a full certificate
 19 of prescriptive authority if the psychologist:

20 (a) Has completed a clinical training program approved by the Oregon Medical Board af-
 21 ter taking into account the committee's recommendation on the clinical training program
 22 under section 4 of this 2011 Act and with the concurrence of the State Board of Psychologist
 23 Examiners;

24 (b) Has passed a national certification examination in psychopharmacology as specified
 25 by the Oregon Medical Board by rule; and

26 (c) Pays the fees required by the Oregon Medical Board by rule.

27 (4) A certificate of prescriptive authority issued under this section expires every two
 28 years. Taking into account the recommendations made by the Committee on Prescribing
 29 Psychologists under section 2 of this 2011 Act and with the concurrence of the State Board
 30 of Psychologist Examiners, the Oregon Medical Board shall adopt rules setting forth the re-
 31 quirements and fee for renewal of a certificate of prescriptive authority.

32 (5) Taking into account the recommendations made by the Committee on Prescribing
 33 Psychologists under section 2 of this 2011 Act and with the concurrence of the State Board
 34 of Psychologist Examiners, the Oregon Medical Board shall adopt rules setting standards and
 35 continuing education requirements for prescribing psychologists.

36 (6) The Oregon Medical Board shall provide a report on the practice of prescribing psy-
 37 chologists to a legislative committee related to health care on or before March 31 of each
 38 odd-numbered year.

39 **SECTION 4.** (1) A clinical training program for certifying a prescribing psychologist un-
 40 der section 3 of this 2011 Act must include 24 months of training in conjunction with a lon-
 41 gitudinal outpatient experience that:

42 (a) Is completed under the contracted residency supervision of at least one psychiatrist
 43 licensed under ORS chapter 677.

44 (b) Is completed pursuant to a residency contract that is approved by the Committee on
 45 Prescribing Psychologists before the licensed psychologist begins the clinical training pro-

1 **gram.**

2 (c) **Includes the following components:**

3 (A) **At least two months of clinical experience in a mental health setting in direct col-**
 4 **laboration with a psychiatrist licensed under ORS chapter 677;**

5 (B) **At least one year of clinical experience in a general medical health setting; and**

6 (C) **If the licensed psychologist intends to practice with a specialized population, at least**
 7 **three months of clinical experience in a specialized setting such as a general pediatric set-**
 8 **ting, a pain treatment setting, a general geriatric setting, an addiction treatment setting or**
 9 **a general neurology setting.**

10 (2)(a) **The committee shall review all clinical training programs proposed by applicants**
 11 **under section 3 of this 2011 Act on an individual basis and recommend to the Oregon Medical**
 12 **Board and the State Board of Psychologist Examiners whether to accept or reject the pro-**
 13 **posed clinical training program, taking into account each applicant's experience and other**
 14 **qualifications.**

15 (b) **Notwithstanding subsection (1) of this section, the committee may recommend ac-**
 16 **ceptance of a clinical training program that does not meet the requirements of subsection**
 17 **(1) of this section if the committee determines that the applicant's experience and other**
 18 **qualifications and the clinical training program proposed by the applicant combine to satisfy**
 19 **the requirements of subsection (1) of this section.**

20 **SECTION 5. (1) No later than 30 days after the Oregon Medical Board receives an appli-**
 21 **cation for a certificate of prescriptive authority under section 3 of this 2011 Act, the Oregon**
 22 **Medical Board shall forward the application to the Committee on Prescribing Psychologists.**

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

27 (3) **No later than 60 days after the committee sends its recommendation on the applica-**
 28 **tion to the Oregon Medical Board and the State Board of Psychologist Examiners, the**
 29 **Oregon Medical Board and the State Board of Psychologist Examiners shall accept or reject**
 30 **the recommendation. The State Board of Psychologist Examiners shall notify the Oregon**
 31 **Medical Board of its decision.**

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

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

42 (c) **If one board accepts the committee's recommendation to approve the application and**
 43 **the other board rejects the committee's recommendation to approve the application, the ap-**
 44 **plicant may request a contested case hearing as provided in paragraph (b) of this subsection**
 45 **or the applicant may request that the boards submit the dispute for alternative dispute re-**

1 solution as provided in ORS 183.502.

2 **SECTION 6.** (1)(a) In the manner prescribed by ORS chapter 183 for contested cases, the
3 Oregon Medical Board may deny, suspend, limit or revoke a certificate of prescriptive au-
4 thority upon proof of a prescribing psychologist's inappropriate use of prescriptive authority.

5 (b) When the Oregon Medical Board receives a complaint about a prescribing psychol-
6 ogist, the Oregon Medical Board shall notify the State Board of Psychologist Examiners and
7 forward the complaint to the Committee on Prescribing Psychologists for a recommendation
8 on disciplinary action. The Oregon Medical Board may accept or reject the recommendation
9 of the committee. The Oregon Medical Board shall notify the State Board of Psychologist
10 Examiners of its decision.

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

13 **SECTION 7.** Taking into account the recommendations made by the Committee on Pre-
14 scribing Psychologists under section 2 of this 2011 Act and with the concurrence of the State
15 Board of Psychologist Examiners, the Oregon Medical Board shall adopt rules requiring:

16 (1) A prescribing psychologist to maintain an ongoing collaboration with the health care
17 professional who oversees a patient's medical care to ensure that:

18 (a) Necessary medical examinations are conducted;

19 (b) The prescribed drug is appropriate for the patient's medical condition; and

20 (c) The prescribing psychologist and the health care professional discuss, in a timely
21 manner, any significant changes in the patient's medical or psychological condition.

22 (2) The prescribing psychologist and the health care professional to each document the
23 collaboration under subsection (1) of this section in the clinical records of the patient.

24 (3) A prescribing psychologist with a conditional certificate of prescriptive authority to
25 obtain the specific written approval of a physician licensed under ORS chapter 677 for each
26 prescription the prescribing psychologist writes.

27 **SECTION 8.** ORS 675.085 is amended to read:

28 675.085. (1) Upon receipt of a complaint under ORS 675.010 to 675.150, the State Board of Psy-
29 chologist Examiners shall conduct an investigation as described under ORS 676.165.

30 (2) If the investigation by the State Board of Psychologist Examiners reveals that a
31 prescribing psychologist, as defined in section 1 of this 2011 Act, has improperly used
32 prescriptive authority, the State Board of Psychologist Examiners shall notify the Oregon
33 Medical Board and the Committee on Prescribing Psychologists established in section 2 of
34 this 2011 Act. The State Board of Psychologist Examiners may impose disciplinary action as
35 permitted under ORS 675.070.

36 [(2)] (3) [Where] If the [board] State Board of Psychologist Examiners proposes to refuse to
37 issue a license or to impose any disciplinary action under ORS 675.070, opportunity for hearing shall
38 be accorded as provided in ORS chapter 183. The [board] State Board of Psychologist Examiners
39 shall render its decision within 30 days after the hearing.

40 [(3)] (4) Adoption of rules, conduct of hearings, issuance of orders and judicial review of rules
41 and orders shall be as provided in ORS chapter 183.

42 **SECTION 9.** ORS 677.265 is amended to read:

43 677.265. In addition to any other powers granted by this chapter, the Oregon Medical Board
44 may:

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

1 to:

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

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

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

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

20 **(3) Issue, deny, suspend, limit and revoke conditional certificates of prescriptive author-**
 21 **ity and full certificates of prescriptive authority for licensed psychologists as provided in**
 22 **sections 3 and 6 of this 2011 Act.**

23 **(4) Taking into account the recommendations made by the Committee on Prescribing**
 24 **Psychologists under section 2 of this 2011 Act and with the concurrence of the State Board**
 25 **of Psychologist Examiners, adopt by rule the prescribing psychologist formulary, as defined**
 26 **in section 1 of this 2011 Act.**

27 **(5) With the concurrence of the State Board of Psychologist Examiners, adopt rules for**
 28 **administering the requirements of sections 3, 5, 6 and 7 of this 2011 Act relating to pre-**
 29 **scribing psychologists, as defined in section 1 of this 2011 Act.**

30 [(3)] (6) Use the gratuitous services and facilities of private organizations to receive the assist-
 31 ance and recommendations of the organizations in administering this chapter.

32 [(4)] (7) Make its personnel and facilities available to other regulatory agencies of this state,
 33 or other bodies interested in the development and improvement of the practice of medicine or
 34 podiatry in this state, upon terms and conditions for reimbursement as are agreed to by the Oregon
 35 Medical Board and the other agency or body.

36 [(5)] (8) Appoint examiners, who need not be members of the Oregon Medical Board, and employ
 37 or contract with the American Public Health Association or the National Board of Medical Exam-
 38 iners or other organizations, agencies and persons to prepare examination questions and score ex-
 39 amination papers.

40 [(6)] (9) Determine the schools, colleges, universities, institutions and training acceptable in
 41 connection with licensing under this chapter. All residency, internship and other training programs
 42 carried on in this state by any hospital, institution or medical facility shall be subject to approval
 43 by the Oregon Medical Board. The **Oregon Medical** Board shall accept the approval by the Ameri-
 44 can Osteopathic Association or the American Medical Association in lieu of approval by the **Oregon**
 45 **Medical** Board.

1 [(7)] (10) Prescribe the time, place, method, manner, scope and subjects of examinations under
2 this chapter.

3 [(8)] (11) Prescribe all forms that it considers appropriate for the purposes of this chapter, and
4 require the submission of photographs and relevant personal history data by applicants for licensure
5 under this chapter.

6 [(9)] (12) For the purpose of requesting a state or nationwide criminal records check under ORS
7 181.534, require the fingerprints of a person who is:

- 8 (a) Applying for a license that is issued by the **Oregon Medical Board**;
- 9 (b) Applying for renewal of a license that is issued by the **Oregon Medical Board**; or
- 10 (c) Under investigation by the **Oregon Medical Board**.

11 [(10)] (13) Administer oaths, issue notices and subpoenas in the name of the **Oregon Medical**
12 **Board**, enforce subpoenas in the manner authorized by ORS 183.440, hold hearings and perform such
13 other acts as are reasonably necessary to carry out its duties under this chapter.

14 **SECTION 10. Notwithstanding the term of office specified by section 2 of this 2011 Act,**
15 **the members first appointed to the Committee on Prescribing Psychologists shall determine**
16 **by lot at the first meeting of the committee the initial terms of office for committee mem-**
17 **bers as follows:**

- 18 (1) **Two shall serve for terms ending June 30, 2013.**
- 19 (2) **Two shall serve for terms ending June 30, 2014.**
- 20 (3) **Three shall serve for terms ending June 30, 2015.**

21 **SECTION 11. (1) Sections 3, 5 and 6 of this 2011 Act and the amendments to ORS 675.085**
22 **and 677.265 by sections 8 and 9 of this 2011 Act become operative on January 1, 2012.**

23 (2) **The Oregon Medical Board and the State Board of Psychologist Examiners may take**
24 **any action before the operative date specified in subsection (1) of this section that is neces-**
25 **sary for the boards to exercise, on and after the operative date specified in subsection (1)**
26 **of this section, all of the duties, functions and powers conferred on the boards by sections**
27 **3, 5 and 6 of this 2011 Act and the amendments to ORS 675.085 and 677.265 by sections 8 and**
28 **9 of this 2011 Act.**

29 **SECTION 12. This 2011 Act being necessary for the immediate preservation of the public**
30 **peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect**
31 **on its passage.**

32